

November 8, 2005



**TRANSCRIPT**  
**November 8, 2005**

**MONTGOMERY COUNTY COUNCIL**

**PRESENT**

Thomas Perez, President  
Phil Andrews  
Howard Denis  
Marilyn J. Praisner

George Leventhal, Vice President  
Michael Knapp  
Nancy Floreen  
Steven A. Silverman  
Michael Subin



November 8, 2005

1 Council President Perez,  
2 Thanks for joining us. Our invocation!

3  
4 Multiple Speakers  
5 [laughter]

6  
7 Reverend Lon Dring, Jr.,  
8 Good morning, everyone. Let us pray -- oh, first, let me say on Sunday, several  
9 Councilmembers joined Montgomery County Habitat For Humanity in the  
10 groundbreaking ceremony for 24 new housing units in Burtonsville. And with this event  
11 in mind, I want to share part of a Psalm read on that occasion, and pray this morning for  
12 plentiful, decent, and affordable housing for all the people of our community. From  
13 Psalm 127: Unless the Lord builds the house, their labor is in vain who build it, unless  
14 the Lord watches over the city (read County) in vain the sentries keep vigil. Let us pray.  
15 Oh, God, our Creator, in your word, you have given us a vision of a holy community  
16 where mercy and truth come together and where righteousness and peace kiss each  
17 other. Grant us, your people of Montgomery County, so to honor and live in your spirit  
18 that we may welcome one another as you have welcomed us and that we may gladly  
19 share the abundance with which you have blessed us. Oh, master builder of human life,  
20 wield well your tools in the workshop of your world that we who come rough hewn to  
21 your bench may here be fashioned to a truer beauty at your hand. We ask it trusting in  
22 your grace and mercy. Amen.

23  
24 Council President Perez,  
25 Thank you.

26  
27 Reverend Lon Dring, Jr.,  
28 God bless the council...

29  
30 Council President Perez,  
31 There was a sense of urgency in that!

32  
33 Multiple Speakers  
34 [INAUDIBLE]

35  
36 Council President Perez,  
37 No, I was going to ask Councilmember Knapp, my friend to join...

38  
39 Councilmember Silverman,  
40 Can I -- I'm sorry.

41  
42 Council President Perez,  
43 Oh, yes, sure, sure.



November 8, 2005

Councilmember Silverman,

I'm sorry, Mr. President, a small point of personal privilege before we get on to the business. I want to recognize the passing of one of our County's most dedicated public servants, Drew Dedrick, who was retired last year as the Chief of Park and Planning's Research and Technology Division, where he served with honor and distinction for 20 years. We have relied over the years on Drew's leadership and vision, number crunching, and support for all the policy decisions that we make and his -- his motto was "Data for decision-makers." And it is that kind of support that is so critical to our decision-making. He will be missed. Our prayers are with [Betty McGowan] and other members of his family and I know the Council really appreciated his leadership and mourn his passing.

Council President Perez,

Thank you. Appreciate it. Okay. Councilmember Knapp, let's talk about the Ag Reserve for a moment. We have a presentation...

Multiple Speakers

[laughter]

Council President Perez,

...this morning, this evening, from the Historic Medley District.

Councilmember Praisner,

No, no. This way, this way.

Council President Perez,

Turn this on and -- come on back here. Come and join us.

Councilmember Knapp,

This way, you're on this side.

Council President Perez,

Yes! Please join us. Good morning.

Multiple Speakers

Good morning.

Council President Perez,

It's the 25th anniversary of our County's Agricultural Reserve and we have -- among others, we have remarkable artistry here and we're going to have a presentation, I believe, I think I saw nine framed portraits celebrating our Ag Reserve. I guess the one I



November 8, 2005

1 have that I taped on the walls, I can take that one off? Okay. Well, let's turn it over to  
2 you.

3  
4 Perry Kapsch,  
5 What we'd like you to do is give that to someone who's not in the Ag Reserve to let  
6 them know about it. My name is Perry Kapsch. I'm here on behalf --

7  
8 Councilmember Praisner,  
9 Twist the mic around...

10  
11 Council President Perez,  
12 Come on, right over here, Perry, yeah. There you go.

13  
14 Perry Kapsch,  
15 Okay, my name is Perry Kapsch. I'm here with the group that put together this map  
16 which is... We brought it to you today as part of the celebration of the 25th anniversary  
17 of the Agricultural Reserve and I'm -- the groups that are here are those that sponsored  
18 it. We have [Dolores Milmo], who is representing the Countryside Alliance, Rural  
19 Montgomery  
20 [INAUDIBLE].

21  
22 Council President Perez,  
23 Many hats.

24  
25 Perry Kapsch,  
26 And Steve Dryden, who was the manager for the project and Tina Brown, who was the  
27 talented artist for this and donated a great deal of time, as well as talent, to this -- to the  
28 effort. I'm from Historic Medley District. We were one of the sponsors. The other  
29 sponsor was Jeremy Criss' office at Economic Development, Ag Services, and he  
30 happens to be here today.

31  
32 Council President Perez,  
33 Right.

34  
35 Perry Kapsch,  
36 I want to thank him, as well. And...

37  
38 Steve Dryden,  
39 Historic Preservation Commission

40  
41 Perry Kapsch,  
42 And the Historic Preservation Commission awarded us a grant as part of this. And the  
43 farmers really want to thank you. I come from a long line of farmers. My father was a



November 8, 2005

1 cattle farmer. My sister is an alpaca farmer. Thanks to you all I raise horses, so now I'm  
2 called a farmer, too!

3  
4 Multiple Speakers  
5 [laughter]

6  
7 Council President Perez,  
8 Until recently you weren't!

9  
10 Perry Kapsch,  
11 And we really want to thank you for your work on behalf of the Ag Reserve and we want  
12 to thank the Council 20 years ago for their work on behalf of the Ag Reserve. These  
13 maps -- we have one for each of you.

14  
15 Council President Perez,  
16 Well, I want to thank you, Jeremy, also, I'm glad you came up here for all of your work  
17 that you do on behalf of our County's thriving agricultural community. You've been a real  
18 champion for the issues there. And I want to thank all the community members who  
19 have worked so hard, starting with our artist! Tina Brown, it was -- Tina was -- I didn't  
20 see you for a while and now I know why! Because I hadn't been in your studio at home.  
21 And now we know what you were doing, hard at work. So, Councilman Knapp, do you  
22 have anything else you want to add?

23  
24 Councilmember Knapp,  
25 Yes, I want to thank everybody. This has been the culmination of a lot of effort over the  
26 course of the year in celebration of the Ag Reserve. but I think one of the most  
27 important things has been that as we continue to grow as a County, that we reach out to  
28 lots and lots of organizations to make sure that people understand what the Ag Reserve  
29 is. And I think you've listed about seven different ones that participated, just in the  
30 production of this map. And I think that's exactly the type of strategy we need to use  
31 going forward to make sure that everyone throughout the entire County understands,  
32 appreciates, and recognizes the importance of preserving the Ag Reserve, and so I  
33 thank you for bringing people together, because I think that's really what's going to  
34 make this successful in the long haul, to make sure that the vision that was identified 25  
35 years ago continues to be a reality 25 and 50 and 75 years from now.

36  
37 Tina Brown,  
38 May I say something?

39  
40 Council President Perez,  
41 Sure, Tina, please! After all that work, you get to speak.

42  
43 Tina Brown,



November 8, 2005

1 Well, I just wanted to say that it was a lot of fun working on this map, and part of the fun  
2 was the stories that people brought to me that they wanted told in the map. We have a  
3 rich historical legacy of agricultural -- the agricultural tradition of Montgomery County.  
4 And there were a lot of farmers who cared that there was a John Deere in this map.  
5 There were orchards that wanted to make sure their place was on it. There are a lot of  
6 people that live and work in this landscape and all the way from the Seneca School  
7 House to the, you know, Red Wiggler Farm, to the historic barn over at Jeremy Criss'  
8 Agricultural Park. There are a lot of stories that people take back to the tradition that  
9 we've had here. Stories their families have had and generations living on these farms. It  
10 was a lot of fun to be the artist trying to pull the stories together. Everybody on the team  
11 brought information and helped me organize it. This map represents a lot of stories and  
12 traditions and a legacy that we're passing on. It was an honor to be working on it.

13  
14 Council President Perez,

15 Great. Thank you all very much. Thanks. Take care. Thank you. Oh, yeah, a photo. Get  
16 in here, Dolores. Please! We'll have to go this way. Come on, nobody bites here!

17  
18 Tina Brown,  
19 Okay, thank you!

20  
21 Council President Perez,  
22 Digital... Digital.

23  
24 Tina Brown,  
25 Okay, thank you.

26  
27 Council President Perez,  
28 Thank you to everybody.

29  
30 Unidentified  
31 Take care.

32  
33 Multiple Speakers  
34 [INAUDIBLE]

35  
36 Council President Perez,  
37 Ms. Lauer, do we have any calendar changes?

38  
39 Linda Lauer,  
40 Consent calendar item "G" has been deleted. That was the resolution to establish a  
41 moratorium on construction of new sand mound septic systems. And you'll see it being  
42 introduced in legislative form further on the addendum. Three additions to the consent  
43 calendar: introduction of a resolution to set a certain taxicab fees that will go to public



November 8, 2005

1 hearing on December 1st at 7:30. Introduction of a resolution to amend the 10-year  
2 water and sewer plan on multiuse, on-site systems, sponsored by Councilmember  
3 Knapp. The public hearing for that is January 19th at 7:30. Introduction suspension of  
4 rules and action is being requested today on a resolution to support an application for  
5 the state's Community Investment Tax Credit Program for the Jewish Social Services  
6 Agency. Legislative session, two bills for introduction, expedited bill 37-05, taxicab fees,  
7 sponsored by the T&E committee. Again, that hearing will be December 1st at 7:30.  
8 Expedited bill 38-05, sewage disposal, septic systems, temporary prohibition,  
9 sponsored by Councilmembers Praisner and Perez, and the public hearing is scheduled  
10 for Tuesday, November the 15th at 7:30 p.m. Also, we've added approval of the  
11 Legislative Journal for October 25th. Thank you.

12  
13 Mary Anne Paradise  
14 You have the minutes of October 25th for approval.

15  
16 Council President Perez,  
17 Okay, the Consent Calendar.

18  
19 Councilmember Floreen,  
20 Move approval.  
21 Council President Perez,  
22 Moved and seconded. Okay, Ms. Floreen?

23  
24 Councilmember Floreen,  
25 Thank you, I just wanted to comment on the additional items that were put on the  
26 agenda -- the taxicab fees, that's item number H and also expedited Bill 2.1, again, with  
27 respect to taxicab fees. I just wanted to let our colleagues know that the T&E committee  
28 is not thrilled about the situation, but we see no alternative to finding a -- a fairer system  
29 for dealing with how we're going to implement the taxicab regulations and the necessary  
30 fees to support that. So, that's why that's on our agenda. We will be taking it up later.  
31 Thank you.

32  
33 Council President Perez,  
34 Okay. Very well. No other comments? All of those in favor? Unanimous among those  
35 present. When I see no other comments, I immediately move! Okay. District Council  
36 Session agenda item number 3: the bimonthly resolution to extend time for Council  
37 action on the Shady Grove sector plan until January 11th.

38  
39 Multiple Speakers  
40 Move approval, Mr. President  
41 Second.

42  
43 Council President Perez,



November 8, 2005

1 Moved and seconded, all those in favor? Unanimous among those present. Let's turn to  
2 the agenda item number 4, which is receipt and release of the OLO report.

3  
4 Unidentified  
5 Second.

6  
7 Council President Perez,  
8 Moved and seconded, all of those in favor? Okay, Karen and others -- you know, Aron, I  
9 have to say it's good to see you again. You don't -- you don't visit us anymore. You  
10 never say hello. And, frankly, now when you say hello to us, I'm usually scared that I've  
11 done something wrong. So, you know, we no longer want to have you in our  
12 neighborhood. It's so sad.

13  
14 Aron Trombka,  
15 I won't take that personally, Mr. President!

16  
17 Linda Lauer,  
18 ...to do the legislative session.

19  
20 Unidentified  
21 But he's still very good with...

22  
23 Council President Perez,  
24 He's very good with legislative... Yes. Let me do one thing before we get to the OLO  
25 report and that is I did -- I wasn't looking carefully enough at the addendum. The  
26 legislative session, there is a legislative journal, I think for approval, as well.

27  
28 Mary Anne Paradise,  
29 Right, October 25th, for approval today.

30  
31 Unidentified  
32 Second.

33  
34 Council President Perez,  
35 Moved and seconded. All of those in favor? Unanimous. Introduction of bills: expedited  
36 bill, 37-05, taxicab fees sponsored by the T&E Committee, public hearing set for  
37 December 1st at 7:30 at -- here. And expedited bill 38-05, sewage disposal, septic  
38 systems, temporarily prohibition, sponsored by Councilmembers Praisner and myself.  
39 Public hearing set for November 15th at 7:30 p.m. So, those were the other items.  
40 Thank you. There is a television set, if people don't want to sit -- or don't want to stand  
41 in the back. I believe there's a television set on the fifth floor for people who are  
42 interested in sitting and watching on the overflow. But, obviously, you're free to stay  
43 here, as well. And there are, I see a number of spaces that are open here. So, feel free





November 8, 2005

1 to come in. Welcome to everybody here today. We're -- we're here to receive the  
2 independent fact-finding review of the OLO concerning what happened in the  
3 Clarksburg Town Center. We are now entering the next phase of this process of  
4 restoring public confidence. When we gave OLO the task in July, the purpose was clear  
5 and the stakes were indeed high. At stake is nothing less than the credibility of and the  
6 confidence in our County government's processes for regulating development. There  
7 were significant problems in Clarksburg and we must find out what went wrong and why  
8 and come up with comprehensive solutions to the problems. We must also look beyond  
9 Clarksburg to the development review processes throughout the County. We didn't get  
10 into this problem overnight. It was many years in the making. But we are all, and I  
11 underscore all of us, accountable, whether we serve in the Executive Branch or the  
12 Legislative Branch. And private sector developers bear responsibility as well. Just as we  
13 will continue to take a critical look at our own processes here in County government, the  
14 development community must also take a long look at itself in the mirror and identify  
15 needed reforms. Everybody is accountable for their part, whether they are sins of  
16 commission or omission and we must not forget in this situation, the violations in  
17 Clarksburg, that these violations were uncovered only due to the extraordinary work of a  
18 remarkable group of Clarksburg residents. We again thank you for your service and I,  
19 again, on behalf of the Council, apologize for our collective failure to be more  
20 responsive. I believe we must move beyond prescriptions to action. Much has been  
21 done since July, but much remains. We're going to hear in a few minutes from OLO, but  
22 I do want to provide a road map of where we will go from here and who will be assisting  
23 us in implementing the necessary reforms to restore public confidence. The buck stops  
24 here at the County Council. Plain and simple. We will take the lead in the oversight of  
25 the needed reforms and I am very excited about the team of experts that we've  
26 assembled to advise us and assist us. The Council has asked Royce Hanson, who  
27 chaired the Montgomery County Planning Board from 1972 to '81, to advise the Council  
28 on immediate actions, to strengthen our oversight of the development process and to  
29 help us implement not only the OLO recommendations that you'll hear about in a  
30 minute, but other recommendations, as well, from other stakeholders, including  
31 community stakeholders, including anybody else who has ideas on how we can fix the  
32 problem. Mr. Hanson is a highly-respected land use and public management expert who  
33 currently serves as Director and Research Professor at the Institute of Public Policy at  
34 George Washington University. He knows the lay of the land. He has the expertise and  
35 he's agreed to advise us without pay starting immediately. In addition, the Park and  
36 Planning Commission has hired a respected consulting firm in development review,  
37 Management Partners, to work with them in implementing the needed changes in  
38 recordkeeping procedures and protocols necessary to tighten up the ship. That effort,  
39 obviously, is something that we will be working with and monitoring very, very closely.  
40 I'm also very pleased that Bob Kendall, who headed up the County's Office of  
41 Management and Budget for 15 years, until his retirement three years ago, has agreed  
42 to come out of retirement and work intensively with Park and Planning over the next six  
43 to eight months. Again, to help Chairman Berlage, the Commissioners and the staff



November 8, 2005

1 restore confidence and credibility to the development approval process. We will be  
2 hearing and I will be asking all of the government officials, including Chairman Berlage,  
3 Mr. Hubbard, Elizabeth Davison to come back in two weeks to the full Council to give  
4 their reactions to the reports that we have received today. It wouldn't be fair to ask you  
5 to come up and respond now having not reviewed the report. We look forward to  
6 hearing from you in two weeks about your reactions to the report and your update on  
7 the steps that you have taken to, again, restore public confidence in the process. The  
8 Council will also be holding a special public hearing on November 29th to solicit  
9 comments from County residents about the development review processes. We want  
10 and need to hear the public's voice on these critical issues. This is a little bit different  
11 from public hearings. Usually we have public hearings for you to respond to a specific  
12 bill that's been introduced. This is a public hearing to get your input on what we should  
13 do. What ideas do you think need to be on the table as we move forward? We look  
14 forward to hearing your voice on this issue. I anticipate that a number of legislative  
15 proposals, some of which I expect will be outlined today in the OLO report, will be  
16 introduced by the Council by the end of November and I anticipate that we will hold a  
17 public hearing on all of the bills, including those that were introduced last week and  
18 those that will be introduced in the weeks ahead in January. Having laid this ground  
19 work, I want to turn to OLO and have them make a presentation. Ms. Floreen's light was  
20 on, I'm sorry.

21  
22 Councilmember Floreen,  
23 Thank you, Mr. President. I just want -- on the scheduling point, I just wanted to note for  
24 the record, I have asked Mr. Hanson to moderate a follow-up session that will occur on  
25 December 10th, where we've been inviting all interested stakeholders and community  
26 members to discuss really the situation of Park and Planning and to come to some  
27 recommendations, perhaps, about best steps to be taken. Now, they occur after the  
28 public hearing. This will out at John [Thompkin's] in Shady Grove. I invite everybody to  
29 attend and we will have the information on our web site.

30  
31 Council President Perez,  
32 A point of clarification, Mr. -- the chair of the PHED committee asked a good question  
33 and Mr. Hanson is the County Special Advisor on this issue. He will be reporting directly  
34 to the County Council. Mr. Kendall and the other management consultant that I  
35 mentioned will be working with and reporting to the Park and Planning commission. We  
36 obviously will be consulting with them on a regular basis, but I wanted to clarify the --  
37 the chain of command and who will be reporting to whom. I contacted Al Haig about his  
38 availability. He was not available and he did give me a lesson on the chain of command.  
39 So, with that, let me turn to you, Karen. And thank you, obviously we interrupted your  
40 summer vacations, we've put your schedule for the year in some state of flux, but that  
41 was very necessary because this is one of the most important issues before us today  
42 and we appreciate your work.



November 8, 2005

1 Karen Orlansky,

2 Thank you. My name is Karen Orlansky, I am the director of the Office of Legislative  
3 Oversight. Joining me here today at the table are OLO staff members Sue Richards and  
4 Aron Trombka. The story of what went wrong with the Clarksburg Town Center project  
5 is complex. It is not about one person or one document or one event. It is not a dramatic  
6 story that tags people as heroes or villains. Instead, it is a story that involves a network  
7 of laws and hundreds of documents. It is about many decisions and actions taken by  
8 many people over 11 years. Before we begin our formal briefing this morning, I'm going  
9 to depart from our usual routine because, after all, everyone in the room knows that this  
10 assignment was not routine. I want to make three points before we begin. First, many  
11 individuals already have formed strong and in some cases fixed views about the CTC  
12 project. I fully expect that some people will cite our report as evidence that they were  
13 right all along. I expect others will contest our report because it does not conform to  
14 what they believe to be correct. And I also expect that some people will pick and choose  
15 pieces from the report that serve their own purposes. On this, I will just say that I am  
16 confident that the office has produced a report, that to the best of our ability, is  
17 professional, fair, and a balanced piece of work. Second, legally resolving what went  
18 wrong with the CTC Project was not our task. We reached findings about a process, not  
19 about whether anyone committed a violation, which is the subject of ongoing  
20 proceedings. And actually, the ongoing hearings serve as just one example of how what  
21 we studied and what we will be discussing this morning is not a static situation. And  
22 third, the issues we are reporting on today, contrary to what almost everyone wants to  
23 hear, do not lend themselves to easy or immediate resolution. Reforming how a  
24 complex process operates takes time and while it is critically important that change  
25 occur, it should not be done fast, just to be expedient without careful consideration to  
26 options and trade-offs. Now I'm ready to begin.

27  
28 [laughter]

29  
30 Our briefing includes three parts. It will take about 45 minutes. The first is methodology.  
31 The second is our findings. And we will close with recommendations. Last July, the  
32 Council assigned the Office of Legislative Oversight with the task of conducting a fact-  
33 finding review of the Clarksburg Town Center project. Our methodology combined  
34 interviews with an extensive document review. OLO's staff spent hundreds of hours  
35 conducting interviews. We reviewed more than 10,000 pages of documents. Our  
36 research was designed to put together the chronology of the development and  
37 implementation of the CTC Project going back to the approval of the Clarksburg Master  
38 Plan in 1994. And in order to track the various steps in the regulatory process,  
39 application, reviews, approvals, issuing permits, inspections, and enforcement, we  
40 spoke with individuals who experienced the process from different vantage points. The  
41 Clarksburg residents, the developer, the builders, the different agencies and branches  
42 of government. The names of the 125 individuals who provided information to OLO are  
43 on the back page of our four-page summary. As of later today, if all goes well, there will

11



November 8, 2005

1 be 342 source documents available for viewing in an online appendix. And in addition,  
2 members of the public can arrange to view paper copies of the documents we reviewed  
3 by calling our office directly. Now turning to our findings. I will start with a very broad  
4 overview and then cycle back with specific details on a number of key findings. OLO  
5 found that much of what went wrong with the CTC Project can be attributed to flaws in  
6 the regulatory process established by the Planning Board and its staff for the approval  
7 and implementation of the preliminary plan of subdivision, project plan, and site plans.  
8 In sum, we found that this regulatory process lacked predictability and reliability, the  
9 adoption of clear decision documents, a complete record, and sufficient transparency.  
10 Contributing factors to the problems we found were the developer's own actions, gaps in  
11 interagency coordination, and underlying ambiguities in the County's laws that govern  
12 the process. We also found that when faced with community questions and complaints  
13 about the CTC Project, the Planning Board and its staff did not respond in a fair or  
14 effective way. The agency did not adequately comply with requests for documents and  
15 information, sent confusing and mixed messages to Clarksburg residents, and failed to  
16 carry out a timely, thorough, fact-based investigation of its own. And finally, we found  
17 that the County Council's previous approach to overseeing the work of the Planning  
18 Board and its staff had not served to identify the serious shortcomings in the  
19 development approval and implementation process that are now evidenced by the CTC  
20 Project. Since July, I think everyone in the room knows, the Council has taken a  
21 different and more active approach to oversight of the Planning Board. Now with that  
22 very broad overview as a road map, I want to go back and provide additional details on  
23 some key findings, in particular related to management of the regulatory process and  
24 the laws that govern it. And then return to oversight and wrap up with recommendations.  
25 So, that's where we're headed. The Office of Legislative Oversight found that the  
26 management of the regulatory process assigned by law to the Planning Board was  
27 deficient in two different ways. In some respects, the process operated in a void of  
28 policies, procedures, and guidelines. In other respects, the process operated sort of on  
29 autopilot with too much reliance on routine practices and boilerplate language that was  
30 ambiguous and not sufficiently tailored to the CTC Project. This morning, we will provide  
31 you with details on three specific management problems. Problems with producing  
32 decision documents, problems with recordkeeping, and problems with the amendment  
33 process. An essential product of an effective regulatory process is a set of decision  
34 documents that present in clear and certain language the conditions of approval. These  
35 documents must be prepared with precise language and careful attention to detail.  
36 Effective decision documents, especially in a regulatory environment, promote a single  
37 interpretation by all stakeholders and that would include the decision-makers and other  
38 parties who sign them, agency staff responsible for implementing them, and members  
39 of the public. OLO found that the decision documents much that the Planning Board and  
40 its staff approved for the CTC Project contain ambiguous language and inconsistencies.  
41 As a result, the regulatory process failed to produce a single clear and certain set of  
42 approval conditions, including development standards. I'm going to turn it over to Aron



November 8, 2005

1 who's going to walk you through a very tangible example using the establishment of  
2 height standards.

3  
4 Aron Trombka,

5 In order to make the examples more real, we're distributing copies of some of the  
6 documents that were involved in the CTC Project. Over the next few minutes, I will take  
7 the Council on a brief walk-through of select CTC project decision documents to show  
8 how ambiguity of language and internal inconsistencies in these documents have  
9 resulted in the absence of clear and certain development standards for the CTC Project.  
10 We'll focus this examination on examples of building height standards in these decision  
11 documents. So, if you will please turn to Circle 1, Circle 1 shows the cover page for the  
12 first CTC Project decision document approved by the Planning Board. This is the project  
13 plan opinion. It covers the entire subdivision -- the entire project -- and was approved in  
14 June of 1995. If you will please flip to Circle 2, you will see page 9 of that same  
15 document. Page 9 of the Project Plan Board opinion shows development standards for  
16 the CTC Project. Note the column headings. The terms "required" and "proposed" as  
17 used in this Board opinion are not defined. As you will see near the bottom of the page,  
18 the required column shows a building height standard of four stories, while the proposed  
19 column, adds a parenthetical 45 feet to the standard for residential buildings. Following  
20 the issuance of the Board opinion, the developer's engineer submitted project plans  
21 signature set drawings to Park and Planning staff. In April, 1996, Planning Board staff  
22 approved the project plan signature set as shown on Circle 3. A data table appears in  
23 the upper right-hand corner. Circle 4 shows an enlarged copy of the project plan data  
24 table. This data table shows maximum heights measured in feet, up to 35 feet for single  
25 family units and up to 45 feet for multi-family units. In March, 1998, the Planning Board  
26 approved the Phase I site plan for a portion of the CTC Project. While the Board's  
27 opinion itself did not explicitly mention height standards, the Board did incorporate the  
28 staff report into the Board opinion as shown on the bottom of Circle 5. So, we then turn  
29 to the staff report, the Phase I staff report included a data table as appears on Circle 6.  
30 Note that the column previously labeled required now is labeled permitted required.  
31 Again, there are not any definitions provided for these -- for these column headings. The  
32 table shows a building height standard of four stories in both columns without any  
33 reference to feet. In March, 1999, the Planning Board staff approved the Phase I site  
34 plan signature set as shown on Circle 7. This signature set included several sheets of  
35 development drawings for the Phase I section of the project. In addition, the signature  
36 set included a sheet of data tables and notes as shown on Circle 8. An enlarged version  
37 of the Phase I signature set data table appears on Circle 9 and shows maximum heights  
38 measured in feet. Again, up to 35 feet for single family units and up to 45 feet for multi-  
39 family units. As we will describe shortly, the Planning Board staff approved a series of  
40 amendments to the Phase I site plan. However, the next decision document approved  
41 by the Board itself was the Phase II site plan. As shown on Circle 10, the Board's written  
42 opinion, again -- not explicitly mention height standards, but did incorporate the Phase II  
43 site plan staff report. The Phase II staff report included a data table as appears on



November 8, 2005

1 Circle 11. The table shows a building height standard of four stories in both the  
2 permitted required column and in the proposed column. In October, 2004, Planning  
3 Board staff approved a signature set for the Phase II site plan as shown on Circle 12.  
4 The cover sheet of the signature set contains both the data table on the bottom left and  
5 the box labeled "General Notes" on the bottom center. Circle 13 shows an enlarged  
6 copy of the signature set data table. Note here that the data table for the Phase II  
7 section for that portion of the project omits any height standard. Finally, Circle 14 shows  
8 an enlarged copy of the signature set general notes that includes a disclaimer stating  
9 that the plan should not be used as a legal document. Through our interviews, OLO  
10 determined that beginning in 2003, the developer's engineer began adding this  
11 disclaimer to signature set drawing it submitted to Park and Planning for all projects, not  
12 just for CTC. Signature sets prepared by other engineering firms and submitted to Park  
13 and Planning for other projects do not include a similar disclaimer. In summary, OLO  
14 finds that the documents contain ambiguous language and internal inconsistencies. As  
15 a result, the CTC Project regulatory process lacked a clear and certain set of approval  
16 conditions.

17  
18 Karen Orlansky,

19 Preparing and maintaining an official record of document is another core characteristic  
20 of an effective and enforceable regulatory process. Complete and accessible records  
21 are absolutely necessary to assure accountability and transparency. OLO found that the  
22 Planning Board and its staff did not effectively prepare or maintain the official record of  
23 documents for the CTC Project. Examples of this are undated documents, documents  
24 with missing pages, and documents that appear to be composite versions of others. As  
25 a result, the agency is not able to produce a reliable and complete set of all approvals  
26 which, in turn, compromises the government's ability to determine developer  
27 compliance. A third management flaw that we found relates to the amendment process.  
28 For that, I will turn it over to Sue.

29  
30 Sue Richards,

31 I would like to brief you on the process that was put in place to amend the CTC Project  
32 decisions that the Planning Board initially approved. The amendment story begins with  
33 the Planning Board's opinion for the Phase I site plan which was approved in March of  
34 1998. The Planning Board attached a condition of approval to the opinion that  
35 authorized staff to amend the Planning Board's original approvals. If you read the  
36 language of condition 38, you will see that basically it authorizes the applicant to submit  
37 amendments for "compatible changes to the unit's proposed as market conditions may  
38 change" and "delegate staff the authority to review and approve a request." An  
39 amendment must keep the fundamental findings of the Planning Board intact and it  
40 must be in order to meet the project and site plan findings. The language does not  
41 establish limits on the scope or number of changes staff could approve nor does it  
42 specify any procedures for staff review and approval. During our review, we learned  
43 condition 38 was drafted by staff and approved by the Planning Board. The intent was



November 8, 2005

1 to maintain design control over the project because it was widely expected that the  
2 original developer would sell to a builder after the initial approvals were in place. And, in  
3 fact, in 1999, the project was sold to Terrabrook, who rehired the original project  
4 architect to prepare a revised concept plan. This plan, which the architect submitted in  
5 July of 2000, proposed changes to the original layout and overall project design to add  
6 more neo-traditional design elements. The concept plan also proposed fewer units than  
7 the Planning Board had initially approved. The site plan reviewer distributed the concept  
8 plan for review to an internal team of Park and Planning staff and to members of the  
9 Development Review Committee, which is a standing committee of Park and Planning  
10 and County government staff who conduct technical reviews of project applications. The  
11 meeting minutes show DRC staff reviewed different phases of the revised concept plans  
12 at meetings in May and July of 2000. When we examined the records we reviewed from  
13 Park and Planning to figure out what happened next, we found amendment application  
14 forms that had no letters of request to explain the nature of the amendment being  
15 applied for and signatures set approval documents that were stamped and signed but  
16 did not adequately or clearly describe the change that had been approved. We found  
17 many of the applications had been renumbered, some had been repackaged, and  
18 finally, we learned as we received documentation from others, that Park and Planning  
19 had an incomplete set of approval documents. Using the information from Park and  
20 Planning and others, we created a composite record of amendments for the CTC  
21 Project. When all is said and done, the amendments for the CTC Project fall into three  
22 categories. First, there are amendments that are documented through stamped, site  
23 plan signature sets. If you look at table 10 on page 58 of our report, you will see the site  
24 plan reviewer approved 10 amendments to the project, beginning in August, 2001, and  
25 ending in January, 2005. All but two of these implemented several aspects of  
26 Terrabrook's revised concept plan. If you look at the table -- at table 11, on page 59, you  
27 can see some of the changes to the early phases of the project off of Stringtown Road  
28 modified the layout of the parking for the townhouse units or replaced larger single town  
29 detached lots with garages in front with smaller lots with garages in the rear that are  
30 accessed from an alley. Some of the changes to Phase 1A, which is near route 355,  
31 relocated the Muse, a diagonal pedestrian greenway, and introduced a road layout that  
32 had been in the project plan and the preliminary plan. The second category of  
33 amendments are those documented through record plats approved by the Planning  
34 Board and the Department of Permitting Services. The fact pattern for the amendments  
35 in Phase II is first that the approval of the Phase II signature set was delayed due to  
36 issues with the park's school site. Next, some time in 2003, planning staff authorized the  
37 developer's engineer to proceed to record plats without an approved signature set.  
38 Again, there is no memo to the file to document this authorization. Finally, over the next  
39 several months, the developer proceeded to record plats, however, since no underlying  
40 approved signature set existed, there are no amendment applications or stamped  
41 signature set amendments. In this case, the changes are only documented on record  
42 plats. Table 13 on page 61 of the report shows several changes to Phase II and some  
43 to Phase I that are shown on record plats approved by the Planning Board in the

November 8, 2005



1 Department and Permitting Services. The third category of amendments are those  
2 approved by Planning Board. This past February, as questions and concerns about the  
3 project continued to grow, the Planning Board held a hearing and work session for  
4 amendments to update the footprints for the manor homes. The Planning Board issued  
5 an opinion in March and the signature set is still being finalized. Next, I would like to talk  
6 briefly about the events related to the alteration of some of the signature set data tables,  
7 which has been one of the most widely reported elements of the CTC's stories. As part  
8 of our study, we interviewed [Wynn Widhams], the former site plan reviewer for the CTC  
9 project. We would like to publicly thank Wynn for meeting with us and for her  
10 cooperation. According to Wynn, in early April, about a week before the Planning  
11 Board's first hearing to address the Clarksburg Town Center Advisory Committee's  
12 allegation of possible height violations, she came in to read over her staff report before  
13 she sent it to the print shop. As she was reading through a final version of the report,  
14 she saw a data table on the last page of the Phase I site plan signature set that had  
15 numeric height standards instead of four stories, which was the standard in the Planning  
16 Board opinion. She was concerned about the discrepancy and so she crossed out the  
17 numeric height limits in the data table and wrote in "four stories". She said she did this  
18 so the data table would conform to the standards in the Planning Board opinion. At the  
19 time, based on her years of experience with Park and Planning, she believed the  
20 Planning Board opinion was the controlling document. In her view, she was not altering  
21 an official document, but editing a supporting document to make it match what she  
22 believed was the official document. She believed condition 38 fully authorized her to  
23 make this change. She made it in a very obvious way and prepared a handout for the  
24 hearing that contained both an edited and unedited version of the data table. During the  
25 hearing, the Planning Board discussed the staff report and the staff handout. On a 4-1  
26 vote, they reached a finding of no violation and they also made a determination that the  
27 data table, not the Planning Board opinion, was the controlling document. After the  
28 hearing, a member of the Clarksburg Town Center Advisory Committee found an  
29 unedited version of the data table at the Department of Permitting Services and  
30 informed Park and Planning. About two weeks after the hearing, the site plan reviewer  
31 was called in to her supervisor's office and asked specifically when she had made the  
32 edit to the table. She told him she amended the data table years ago. When she went  
33 into work the next day, she called her supervisor to say that, in fact, she had marked up  
34 the table shortly before the hearing. In OLO's view, the events of this past April  
35 complicated the CTC story, but they were only one part of a broader regulatory process  
36 that evidenced a troublesome lack of rules for amending and interpreting the CTC  
37 Project's governing documents.

38  
39 Karen Orlansky,

40 As indicated earlier, we found a number of factors that contributed to the management  
41 problems just discussed. We will now take a few minutes to explain those a bit further.  
42 First, the actions of the CTC Project developer contributed to the confusion in the record  
43 of approval. Specifically, the developer prepared, submitted, and signed documents that

16





November 8, 2005

1 contained errors and internal inconsistencies. Further, when members of the CTC  
2 Project developer's team noticed discrepancies in the decision documents, they did not  
3 insist on returning to the Planning Board for clarification. Problems with interagency  
4 coordination also contributed to flaws in the regulatory process. By now, one of these  
5 examples is well-known. Neither the Department of Park and Planning nor the  
6 Department of Permitting Services had a system in place to check whether building  
7 permit applications met the height standards in the approved CTC Project site plan.  
8 Another problem of interdepartmental coordination in the Executive Branch, between  
9 the Department of Permitting Services and the Department of Housing and Community  
10 Affairs. The record shows that DPS issued over 75 building permits for the CTC Project  
11 before the DHCA and the developer had executed an MPDU agreement. This  
12 sequencing did not comply with the MPDU law. I am going to have Aron now do a brief  
13 explanation of another interagency coordination problem that concerns the MPDU  
14 agreement itself.

15  
16 Aron Trombka,

17 The Planning Board determined the number, type, location, and phasing of MPDUs in  
18 the CTC Project through the site plan process. In May, 2002, the Board approved the  
19 Phase II site plan and incorporated an MPDU location map into its opinion. Now,  
20 Chapter 25-A of the County Code requires that a project developer enter into an MPDU  
21 agreement with DHCA. OLO's research found that the MPDU agreement for the CTC  
22 Project includes all the requirements and are consistent with that location map was that  
23 was incorporated into the Board's Phase II site plan opinion. However, as Sue just  
24 finished describing, there were several site plan amendments approved by the Planning  
25 Board or Planning staff from 2002 through 2005 which modified the number and  
26 location of MPDUs in the CTC Project. During this time period, the project developer,  
27 the builders, and Park and Planning staff did not notify DHCA about the changed  
28 number and location of MPDUs. Although the site plan requirements for MPDUs  
29 changed, the CTC Project MPDU agreement remained a stagnant document fixed with  
30 the outdated requirements from 2002. Despite all of these irregularities, MPDUs in the  
31 CTC Project are being built and they are being built consistent with the requirements  
32 established through the site plan process.

33  
34 Karen Orlansky,

35 Another and quite important contributing factor is that the laws governing the regulatory  
36 approval process for the CTC Project contain ambiguities on the process to be followed  
37 and the assignment of agency responsibilities. For several additional details on this, I  
38 am going to turn it back to Sue.

39  
40 Sue Richards,

41 Specifically, we found that the law does not provide clear direction to the Planning  
42 Board on how to administer the regulatory approval process for the CTC Project. It  
43 doesn't define the characteristics of the Planning Board's hearing process or the



November 8, 2005

1 characteristics of its decision documents. It doesn't specify the decisions the Planning  
2 Board should make at each step and it doesn't specify clear rules for interpreting or  
3 sorting out conflicts among different types of governing documents. A second problem  
4 with the law is that the residential mixed use zone does not specify how and when the  
5 Planning Board must establish height standards for a project. There is no height  
6 standard in the zoning ordinance. Instead, the zoning ordinance identifies three  
7 documents as potential sources of a height standard. The master plan, the project plan,  
8 and the site plan. However, it does not stipulate when the Planning Board must  
9 establish a final height standard. Another problem in the law is that it does not clearly  
10 assign the responsibility for conducting building permit reviews to assure zoning  
11 compliance to either Park and Planning or the Department of Permitting Services. As  
12 the CTC Project shows, Park and Planning and the Department of Permitting Services  
13 did not have a clear mutual understanding of who would do what. The result was that no  
14 one was checking the plan attached to a building permit application for compliance with  
15 the height standard the Planning Board established as part of its site plan approval. Our  
16 final legal issue is that the zoning ordinance contains incomplete guidance on whether  
17 or how the Planning Board approvals should address all relevant sections of the County  
18 code and also on the Planning Board's authority to waive different provisions of County  
19 law. When we looked at the Planning Board opinions for the CTC Project, we found they  
20 routinely addressed compliance with the Forest Conservation and Water Quality Laws,  
21 as Chapter 59 requires. However, they do not usually address compliance with other  
22 laws, such as the Road Code or the Fire Safety Code. We also found a discussion  
23 about whether the proposed width of some streets complied with the relevant sections  
24 of the Fire Safety Code at the staff level, but did not find a discussion of this issue or a  
25 waiver in a Planning Board opinion.

26  
27 Karen Orlansky,

28 The next area I want to focus your attention on this morning concerns our observation  
29 that when faced with questions and complaints from members of the public about the  
30 CTC Project, the Planning Board and its staff did not respond fairly or effectively.  
31 Starting in Spring, 2004, a group of Clarksburg residents raised questions and concerns  
32 about Newland Community's proposal for Phase III of the CTC Project, which includes  
33 the retail section of Town Center. While conducting research on the history of the  
34 project, Clarksburg Town Center Advisory Committee, CTCAC, representatives  
35 reviewed documents which raised additional questions about previous Planning Board  
36 approvals. During the fall of 2004, CTCAC articulated specific complaints about the  
37 height of structures already built. They articulated these complaints to Department of  
38 Park and Planning staff and in January, 2005, to the Planning Board Chairman. For  
39 many months now, CTCAC has continued to study CTC Project documents and identify  
40 alleged violations of various Planning Board actions. The events of the past year-plus,  
41 demonstrate that the Planning Board and its staff did not have a structure in place to  
42 effectively respond to the public's questions or request for documents. Further and  
43 perhaps most significantly, when confronted with specific allegations of site plan

18

**This transcript has been prepared from television closed captioning and is not certified  
for its form or content. Please note that errors and/or omissions may have occurred.**

November 8, 2005



1 violations and with knowledge that the project's decision documents were open to more  
2 than one interpretation, the Planning Board and its staff failed to carry out a timely and  
3 thorough fact-based investigation of its own. The problems created by the absence of a  
4 structure to respond to public inquiries were exacerbated during the past year when  
5 agency representatives provided different and at times conflicting answers to  
6 Clarksburg residents. From the residents' perspective, receiving conflicting answers  
7 from representatives of a single agency creates confusion and frustration. In turn, it also  
8 created a situation where residents began to lose confidence as to whether any answer  
9 was the correct one. In terms of the Council's oversight of the Planning Board: for years  
10 the County Council relied on its budget review and semi-annual meetings with the  
11 Planning Board as mechanisms to oversee the activities of the Planning Board and its  
12 staff. Historically, the Council has focused on the overall level of resources allocated to  
13 the agency, the annual work program, with special attention to the master plan  
14 schedule, and major policy or fiscal issues identified by Councilmembers, Council staff,  
15 Planning Board members, or Planning Board staff. The Council's approach to  
16 overseeing the Planning Board's activities, however, did not serve to identify the  
17 underlying structural problems with the law and management system that the CTC  
18 Project chronology now makes apparent. In fact, Councilmembers' initial reaction to  
19 learning about alleged problems with the project was influenced by their baseline  
20 operating assumption that the regulatory process that was in place was functioning  
21 without major management deficiencies. Since July the Council has shifted its approach  
22 to overseeing the Planning Board and its staff and the report documents the many  
23 activities already under way. So summary, as you will read in the full report, OLO made  
24 a total of 16 findings. At the core of these findings are serious management and process  
25 deficiencies. The Clarksburg Town Center project was subject to a regulatory process  
26 that lacked predictability and reliability, clear decision documents, the establishment of  
27 fixed development standards, complete records and transparency. Contributing factors  
28 were underlying ambiguities in the County's laws, gaps in interagency coordination, and  
29 the CTC Project developers own actions. These are serious problems that had serious  
30 consequences. And now turning to our recommendations for next steps, the Office of  
31 Legislative Oversight recommends that both the authority and responsibility to address  
32 the problems identified in our report rests with the County Council. OLO proposes a  
33 program for reform that consists of three sequential steps for Council actions to  
34 systematically address the leader, management, and oversight problems that we found.  
35 First, the Council should articulate clear and certain expectations for the characteristics  
36 of the regulatory process and translate those expectations into law and regulation.  
37 Second, the Council should direct the Planning Board Chairman to submit, no later than  
38 January 15th, a comprehensive management improvement plan that will address the  
39 flaws that OLO observed in the regulatory process. And third, the Council should revise  
40 how it approaches its own annual budget review and semiannual meetings with the  
41 Planning Board in order to sharpen the Council's oversight of the Montgomery County  
42 portion of MMC/PPC. The recommendations chapter in the report provides additional  
43 details on each of these steps. In closing, I think we've made our time here. I want to

19

**This transcript has been prepared from television closed captioning and is not certified  
for its form or content. Please note that errors and/or omissions may have occurred.**



November 8, 2005

1 thank the many individuals who provided information to the office during the past four  
2 months. The time taken to share information and insight was truly greatly, greatly  
3 appreciated. But I must admit that my deepest thanks goes out to the extraordinary  
4 effort of the entire OLO staff, including not only Sue Richards and Aron Trombka, who  
5 are up here with me, but also Craig Howard, Scott Brown, [Kristen Latham], [Terry  
6 Bush], [Suzanne Langoven], and [Karen Yoskovitz]. You guys are totally awesome. It is  
7 a privilege to work with you. So thank you, we're done! Your turn!

8  
9 Council President Perez,

10 Okay! Everybody's going to have questions and/or comments on what we've done is  
11 we're going to have our first round consist of 10 minutes per member. Then a second  
12 round, if necessary, of follow-up. We will go from right to left, starting with  
13 Councilmember Knapp.

14  
15 Councilmember Knapp,

16 Thank you, Mr. President, I appreciate it. I guess this becomes kind of the -- it feels, to  
17 some extent, as though it's the culmination, but in the reality I guess this is really the  
18 beginning. So, I want to thank OLO for their efforts. I was fairly critical early on. Because  
19 of the time it was taking to do this. And I think clearly they have worked above and  
20 beyond to try and make sure we have all of the information. I think Karen, in had her  
21 opening 3 provisos is probably accurate in that people will interpret it however they want  
22 to. I think it's important for us to kind of keep it in perspective as to -- I think it was pretty  
23 clear throughout the report that it's difficult, I think, for virtually anybody participating in  
24 the process, to deny any blame or responsibility. A couple remarks, then just a couple of  
25 questions, then we'll work through this this morning. First of all, I think it is important for  
26 us to keep this in perspective. We've been reading about this for the last five months in  
27 the paper. The Clarksburg Town Center folks have been living it for the last roughly year  
28 and a half. And have been doing -- have been doing yeoman's work to try to bring things  
29 to our attention. That being said, while this is a very important issue, the issue itself is  
30 still, you know, it's height, it's set back, it's a process that needs to get fixed. There are  
31 lots of bigger issues out there in the world and I think we need to keep it into context.  
32 That notwithstanding, the part that concerns me the most about what we've heard today  
33 is that I believe our residents of Montgomery County, the residents of virtually any  
34 community, have the -- should have the ability to expect that government is and should  
35 be the most responsive body to their concerns. It represents them. It effectively is there  
36 to serve them. And so when you read a report that talks about how people didn't  
37 respond, how agencies and departments didn't talk to each other and effectively you  
38 have communities that have to spend thousands of hours to bring things to our attention  
39 at a level that this community has done, I think points to a number of shortcomings in  
40 the way that we as a collective are proceeding. I think we need to look at that very  
41 closely and re-examine how we're working together. Even in light of all the things that  
42 have come forward, the number of times in the last two or three months where we've  
43 had different departments sit in front of us and clearly try to delineate how only a portion

20

**This transcript has been prepared from television closed captioning and is not certified  
for its form or content. Please note that errors and/or omissions may have occurred.**



November 8, 2005

1 of a certain problem was their responsibility, as opposed to trying to address all of those  
2 elements collectively I continue to be astounded by and I think we need to take that  
3 seriously to heart. This -- I was struck yesterday as I was at the "Engaging the  
4 Community, Planning for the Future" event that Park and Planning hosted, looking at  
5 how -- where do we grow as a County from here? And the part that I think was interest  
6 is if you listened to the first two speakers, I was there for, Ed McMahon and Fred Kent,  
7 their presentations were "Planning In a Mature County" and "Creating Great Public  
8 Spaces". If you listened to the things they were outlining and the elements they were  
9 identifying, effectively they talked about the Clarksburg master plan, the types of  
10 elements they were discussing were the types of things that were embodied in the  
11 Clarksburg master plan. I was struck by Fred's comments when he got to the end,  
12 where he talked about all of the things that people think go into this and yet he said the  
13 biggest pieces are its vision and management. And it becomes clear to me after all of  
14 this, we have the vision, we just don't have the management. And I think we've got to  
15 really seriously reflect on that. I don't necessarily say that as an indictment of a person  
16 or a group of people. I think in many respects, as this report indicates, there's some  
17 element of benign neglect. We'd assumed things were happening and taking place  
18 because they always had, therefore they always were. We weren't asking the questions  
19 that needed to be asked. I think -- I think that's problematic. This is a difficult thing for  
20 me to continue to talk on because it feels like we've been talking about it for a long, long  
21 time. And it's interesting, early on when I met with Amy, Kim, and Carol, I -- I told them  
22 that I'd like nothing better than when they walked in, 'cause we had to respond quickly.  
23 They called me one evening and we needed to try and have a conversation pretty  
24 quickly. That I wanted what they -- I wanted to be able to respond to what they said as  
25 saying there wasn't much there there. And, unfortunately there, was a lot of there there.  
26 I just want to thank them and the rest of the Clarksburg community. Them for their  
27 efforts and driving this forward and the residents of Clarksburg who have really  
28 participated in or endured through this over the course of the last year and a half. We  
29 have a community that is going to be a great community, in many respects already is a  
30 great community, that is now struggling to try to establish an identity that most people  
31 know in the press, only in a negative way. And that's a real problem. And we need to  
32 work together both as a County and within the community to try to readdress that. And I  
33 know that we all say this is going to be a great community, but the problem is once the  
34 controversy goes away, probably the stories go away, too. And so what will be stuck on  
35 people's minds outside of the Clarksburg community is what has been written in the last  
36 months. And that's a problem. I've talked to D.C. Councilmembers and folks who rarely  
37 pay attention to anything going on in Montgomery County and they all know the name  
38 Clarksburg. And so we're going to have to work together as a County to recognize that  
39 because we helped create that problem. We're going to have to help try to figure out  
40 how to rectify that. So, we will have to do that. Part of the problem, I think we had at the  
41 beginning, is we did have a good vision. We had a good vision, Park and Planning  
42 worked together with the community to put a vision together in 1994 and I think that  
43 worked primarily as a result of the active engagement of the community. Terrabrook and

21

**This transcript has been prepared from television closed captioning and is not certified  
for its form or content. Please note that errors and/or omissions may have occurred.**

November 8, 2005



1 then Newland's put together very good marketing documents. That worked. And,  
2 unfortunately, I think what we're seeing here, what we're dealing with a lot, is people  
3 focused a lot on the spin and the vision as opposed to focusing on the substance. Even  
4 today, I know we're trying to spin our way out of things. I know following this there are  
5 press conferences to try and explain various perspectives on who said what and who is  
6 responding to what. I would humbly submit that if anybody in here thinks that the people  
7 out there think we know what we're doing, we're doing a good job, we're wrong. So, to  
8 try to spin our way out of this right now is -- we're way past that. So, I would suggest we  
9 all start sitting down right now and figuring out how we're going to put the substance  
10 together, which is to really figure out what is on the ground, figure out what's on the file,  
11 figure out what's supposed to be wherever it's supposed to be and have the real  
12 conversations and worry a lot less about what the folks in the back row are writing. And  
13 that -- that is tough. I recognize that. The other thing I would say is I know we are going  
14 to probably get to spend the better part of today trying to figure out who did OLO blame  
15 the worst or blame the most? And who takes the brunt of this? I think if you add up the  
16 numbers, it looks like more are directed at Park and Planning, but that notwithstanding, I  
17 think it's important to recognize that everyone has contributed to this in some way,  
18 shape, or form. And you can call it the developer, call it the developers or the builders,  
19 you call it Park and Planning, you call it DHCA, you call it the Council. I think that to the  
20 Council President's credit, this morning he started out that the buck does, in fact, stop  
21 here. I think people would be remiss to walk out the door today and say this somehow  
22 absolves anybody else or any other organization of any responsibility in this. I think  
23 that's very important to keep in mind. We can spend a lot of time trying to figure out the  
24 blame. I'm not sure that that's worth it. We have to, I think, now, after having seen this in  
25 the public for the last six months, now is the time for us to react swiftly. Not to overreact.  
26 I know people are trying to do lots of things, we're trying to put lots of pieces into play.  
27 That's a problem. I think we need to take measured steps. We need to take quick  
28 measured steps. I will be honest, I have concerns over some of the things I've seen  
29 already and some of the recommendations that are moving forward in Park and  
30 Planning because the concern I have is that we are trying to overreact in certain areas,  
31 to do things for the sake of doing them. We need to put in place a management  
32 structure that allows our -- our Park and Planning Department to function and function  
33 well. Which means people have to have authority and accountability, but they need to  
34 be able to make decisions. If the first things we do are to start to move management  
35 oversight up to the highest point in the pyramid, that's not a recipe for getting things  
36 done. It may solve a problem for the next three weeks, but the reality is the Chairman  
37 can't sign off on everything that will be changed. Quite honestly, we have good and  
38 capable people who have done a great job at Park and Planning for many years. The  
39 challenge is now to provide the appropriate management and oversight, not to look over  
40 their shoulders, but to let them know what the standards are...

41  
42 [beeping]



November 8, 2005

1 ...uh oh, is that my 10 minutes?

2  
3 [laughter]

4  
5 All right! All right! One more quick --

6  
7 Council President Perez,  
8 There will be a second round if necessary.

9  
10 Councilmember Knapp,  
11 Hold on, hold on! Hold on, all right, let me ask my -- my one question. At this point! And  
12 then wrap up. The -- the part -- the part that I struggle with, Karen, is -- as I -- as you  
13 laid this out, effectively everything was ambiguous, everything was confusing. It seems  
14 to me that there had to be some baseline set for decisions to be made. There were  
15 project plans, there were preliminary plans, there were site plan submissions, and if all  
16 of those things weren't working here, it certainly calls into question how anything's  
17 working. And so I guess what I'd like to have an understanding of or clarify a little more  
18 as to what -- what would the standard process be and at what point did this kind of  
19 divert from it? Is there a way to kind of -- there had to be some way to make some  
20 baseline set of decisions and then things went awry. I'm curious where is the baseline?  
21 And where did things start to depart from the base set of information?

22  
23 Karen Orlansky,  
24 Big question. Not a simple answer. I think what I'd say is that the -- we did not mean to  
25 say every single word in every single document. It's just in that if you have a set of  
26 decision documents and especially on bottom line issues like development standards,  
27 how high, how close, it creates serious problems in terms of what happens on  
28 interpreting that when you go into implementation. There were many things in the  
29 project that matched what was set out. There's probably statements in the decision  
30 documents that have traveled for years without problems, even though if you looked at  
31 them, you just arrived, pulled the paragraph, it's hard to understand. But if you live it and  
32 were within it, it worked. I think our point was that you can't have a regulatory process  
33 that tolerates the types of ambiguities that we identified. It was not to say it was 100%  
34 ambiguous, is that the documents contain ambiguities on very, very significant issues.  
35 You can't say "Oh, well, the rest of it is okay" because these are such fundamental  
36 requirements when you're in the development business.

37  
38 Councilmember Knapp,  
39 Okay. We will come back around. I would just conclude in saying that I think our  
40 challenge today is to get back -- get beyond the spinning, the visioning, and the blame,  
41 but to begin to move forward quickly. I think the Council President outlined a number of  
42 things. I would urge the Council, as we look at this, to really think about how we start  
43 things collectively as, at least to begin the discussion from an identification of basic sets

23



November 8, 2005

1 of issues and basic sets of legislation that we can then debate as opposed to end up  
2 going in 17 different directions. I think the Council President and I had the conversations  
3 in that respect. But the challenge is now, how do we get this fixed and how do we move  
4 it forward in the shortest time frame possible, in the most appropriate way possible? I  
5 look forward to working with everyone to get there.

6  
7 Council President Perez,  
8 Mr. Andrews?  
9

10 Councilmember Andrews,  
11 Thank you. Well, thank you, to the Office of Legislative Oversight for a very thorough  
12 document about what happened in Clarksburg and specific proposals for recommending  
13 reforms. And the County certainly owes a thank to the leaders of the CTCAC for their  
14 diligence and perseverance over the last year and a half or so. It wouldn't have come to  
15 light, at least not when it did, without their excellent work. And that really leads to my  
16 point. Which is a point I don't think was addressed directly in the OLO report, but one I  
17 think might have prevented Clarksburg from happening and that is the lack of public  
18 involvement in the amendment process. I think the situation that existed in the Planning  
19 Board reflected a institutional County bias that favored developers over the public  
20 because the public was not involved after the initial Planning Board opinion. And so  
21 where the folks in Clarksburg were expecting one thing, based on the Planning Board  
22 opinion, the amendment process was going forward and there was no restriction, as you  
23 said, on the scope or the number of amendments that could be made by staff without  
24 public involvement. Had there been public involvement from the beginning it might have  
25 been caught early on and we might not be in this situation now. Judge Louis Brandeis  
26 once said something very similar to this, I'm paraphrasing, that sunshine is the best  
27 disinfectant. Had there been more public involvement, more open government, more  
28 sunshine, in this process when the amendments were being made, we might not be at  
29 this point now. That, I think, is something that needs to be emphasized because it might  
30 have prevented what occurred and even though all of the other flaws that were  
31 identified are identified in the report need to be corrected, the public involvement might  
32 have caught them at an earlier stage and so that's why it's always important to have as  
33 much public involvement as possible. If you don't have it early on, you're likely to have it  
34 later on as has been the case. And I think that is a point that needs to be emphasized  
35 more. It's suggested in some respects in Finding three, but it's not hammered home.  
36 Finding 3 indicated the process for making changes to approve CTC project site plans  
37 lacked sufficient parameters for tracking requests and making decisions. But the public -  
38 - lack of public involvement really was a critical flaw that, combined with the unlimited  
39 scope on the -- or lack of definition of what staff were allowed to change, combined to  
40 allow major changes to be made that were not what the community expected and which  
41 have contributed greatly to the mess in Clarksburg. And so that is actually the -- the  
42 primary point I'm going to make. I know other Councilmembers will have many other  
43 things to say and, don't worry, I will leave you some things to say. But I think that

24





November 8, 2005

1 Clarksburg might have been prevented had there been public involvement throughout  
2 the process. And that, I think, in addition to all the changes in the policies and laws is  
3 essential. I know the Planning Board has taken some steps in that direction already, but  
4 I think that is a critical finding that needs to -- critical shortcoming of what took place that  
5 needs to be emphasized. And perhaps, Karen, you could comment on what you think  
6 that might have contributed.

7  
8 Karen Orlansky,

9 I was just going to say one thing, which is I think in -- the statute did not help out in that  
10 the definition of minor versus major amendment's quite vague, it doesn't have  
11 parameters on what must go to the Board and so there were decisions made along the  
12 way and I think you have a good opportunity as you look at the statute and you think  
13 about rewriting that section of 59 to set out your expectations in terms of public  
14 involvement and think about in statute or regulation what you'd like them to look to be,  
15 include. So, I think that's really important. The other is the recommendation that we  
16 make that you address overall the types of procedures that are followed. In all Board  
17 approvals and other proceedings, like if they end up in other show cause hearings down  
18 the road, do you want them to follow, for example, the Administrative Procedures Act.  
19 Right now they follow their own rules of procedures, but you don't approve them. Here's  
20 an area for the Council to weigh in and say, "Okay, I want this process to include public  
21 approval. I want it to be full of sunshine here, here, and here, and be very clear as you  
22 rewrite the law.

23  
24 Councilmember Andrews,

25 Well, what I think what needs to be the practice is that whenever developers and  
26 planners are involved in making a change, the public needs to be involved, as well, and  
27 that the only exception to that should be in the case of purely technical amendments,  
28 which clearly...

29  
30 Karen Orlansky,

31 Probably need to define that.

32  
33 Councilmember Andrews,

34 Yes, clearly -- clearly you do! Clearly. But I think people can come up with an  
35 agreement on what's technical and what's substantive. And these were clearly  
36 substantive changes that are the reason we're here. So, thank you very much for a very  
37 thorough report and I think that the Council President's announcement of the  
38 appointment of Royce Hanson to assist the County Council and Bob Kendall to assist  
39 the Planning Board is a very good step.

40  
41 Council President Perez,

42 Well, there we go! He's modeling!



November 8, 2005

1 Councilmember Praisner,  
2 I will try. I want to add my thanks, as well, to the Office of Legislative Oversight for your  
3 outstanding work and to those who contributed by giving input to the office. I think it's  
4 important, though, as we focus on this that we also articulate again what this is and  
5 what it is not. It is a snapshot based on your analysis of the Clarksburg Town Center,  
6 based on your review of the materials and the conversations with individuals. It is not an  
7 overall review to that extent for any other projects, anywhere else in the County, nor  
8 does it go in-depth to the extent you did on Park and Planning of the County agencies  
9 and the extent to which there are procedures in place or not. You make some  
10 comments about the County agencies but there is not the comprehensive review, nor  
11 are there multiple sites where you have looked at the issue. So, I think it's important as  
12 we go forward for us to recognize that because from my constituents' perspective, we  
13 have issues that have been -- arisen in Leisure World and in elsewhere, White Oak  
14 area, that have nothing to do with the Clarksburg Town Center and do not sit squarely,  
15 exclusively, at the Park and Planning Commission process as it has evolved. I have a  
16 couple of questions but I want to make some overall comments first. I think -- I am so  
17 glad that we did not take action on the Shady Grove master plan before we reviewed  
18 this because, once again there, we have complex land use and complex zoning with  
19 flexibility for the developer in implementation of vision and it is clear to me that our  
20 procedures and our processes, which might have served us well in the R90 and the R60  
21 zones, although I know Mr. Denis and I both agree that when it comes to height and  
22 implementation there are issues even there. But to a great extent, the likelihood of  
23 seeing multiple modifications to site plans and signature sets, et cetera, is probably less  
24 likely to occur in fairly standard zones. While we have the more complex zones, our  
25 procedures and our documents and our regulations have not kept pace with them. And  
26 we need to not only move quickly to put in place, including Zoning Text Amendments for  
27 the Woodmont Triangle that shift density, having in place the kind of recordkeeping and  
28 procedures and clear delineation of responsibilities and clear delineation of how they  
29 will be monitored and tracked and how the public can monitor those. But we also have  
30 to, it seems to me, change the culture in this County. And we have to change the  
31 culture, not just at the Park and Planning commission level, but across agencies that  
32 encourage employees when they identify problems, as I believe folks in DPS and in  
33 Park and Planning identified as problems and complexities with implementation of this  
34 zone, not having the wherewithal or the encouragement to come forward more  
35 aggressively to say "We have problems with this zone and we need to implement better  
36 procedures in order to monitor that." I think you've made a good case for the fact that no  
37 matter what may be the failings of the implementation, that there are also certain  
38 responsibilities on the part of the developer. If one knows what the speed limit is in an  
39 area, you can't use the fact that there is no sign there to not -- if you are stopped by  
40 someone from a standpoint of following the law. So, I think that there are also significant  
41 issues about developer implementation or developer participation. That comes out, I  
42 guess from your comments when you briefed me about engineers coming forward to  
43 Park and Planning, having identified that they had issues. The response from Park and

26



November 8, 2005

1 Planning was not adequate, but I think the amendments to site plans being filed now  
2 identifies the fact to me that folks know that they have problems. And it was in a climate,  
3 perhaps, where those problems would have gone by the board and now they will not. I  
4 want to ask you about the DAP process, the Development Approval Process, which you  
5 identified ended abruptly, so to speak, from a stand point is of the Council's review of  
6 development approval and issues associated with development approval started by the  
7 Council several years ago, but not -- not followed after '98. Did you make -- you make  
8 reference to that but you don't draw any conclusions from that. I just wondered whether  
9 you had thoughts about that process.

10  
11 Karen Orlansky,  
12 I have one observation -- well, we do make the direct link back to the to the complication  
13 that occurred when they divided -- they assigned lead responsibility and there wasn't  
14 clear and...

15  
16 Councilmember Praisner,  
17 Follow-up?

18  
19 Karen Orlansky,  
20 Well, that DPS and Park and Planning walked away from the table with different  
21 understandings of what it meant to assure compliance with site plans. So, that's known  
22 and I know it's being attended to. That grew out of the DAP, that particularly agreement.  
23 The other -- the only other observation I would make is that as some of the  
24 Councilmembers were here at that time, there was a real effort, it was called  
25 streamlining the development authorization process, and there was a lot of emphasis  
26 placed on not -- nobody wanted to be the red tape, everyone wanted to be the green  
27 tape. And in our interviews with Park and Planning staff, as well as Executive Branch  
28 agency staff, a message that came out of that was, you know, figure out how to do your  
29 business efficiently. And it is a hypothesis that some of what we saw and some of what  
30 we found was out of a good-hearted effort to be more efficient. And perhaps in trying to  
31 move faster and not be the holdup, there were some problems and some lack of  
32 attention paid to the details. It's a hypothesis, I don't have evidence of that.

33  
34 Councilmember Praisner,  
35 I would, I guess, disagree with an assumption that you equate efficiency with speed.

36  
37 Karen Orlansky,  
38 No, you're right. You're absolutely right about that.

39  
40 Councilmember Praisner,  
41 They're not the same thing at all.

42  
43 Karen Orlansky,



November 8, 2005

1 I apologize for that. I don't mean to equate them. But I think there was a pressure on  
2 moving quickly. Which is not efficiency. I stand corrected on that.

3  
4 Councilmember Praisner,

5 Okay. The other question I had dealt with the difference of opinion of what is the binding  
6 document and I wondered in whatever time I have left, if you would comment on that. It  
7 appears in the report, as I obviously only had a few minutes to look at it, that there are  
8 even within County, the County entities, differences of opinion as to what should be  
9 binding. It would seem to me that we, as a Council, need to get the input of those who  
10 have differences of opinion and then conclude ourselves one way or the other.  
11 Obviously with Mr. Hanson and assistance and the input of everyone else.

12  
13 Karen Orlansky,

14 Just one comment. In talking this through with Mr. Faden, you know, his  
15 recommendation is that we think about really it has to do with guidelines on interpreting  
16 documents, not just identifying a controlling document. Because, in fact, we found some  
17 places with inconsistencies within. So it's actually bigger than just like pick one. It is  
18 rules for interpreting documents. What we found during the course of our study was that  
19 there are different views in -- at different levels of management and across agencies  
20 and within agencies about what the -- for this conversation I'll use the term "controlling  
21 document," but if you have two documents that say different things, which one rules?  
22 And I don't believe there has been a -- any training, we didn't come across any training  
23 within Park and Planning, no guidance. It was kind of what you learned on the job. And  
24 so people in the agency had different views about it. And in the Fall, people were  
25 looking at the Board opinion. And then if you listen to the transcript in the Spring, the  
26 Board itself is trying to figure out about which the controlling document is, and in April...

27  
28 Councilmember Praisner,

29 So, that is definitely an issue that we will have to deal with the Planning Board and  
30 others but have to come to some closure about. It seems to me that what you're  
31 suggesting is a series of regulatory documents, much like we have Executive Regs that  
32 the Council would approve in some form, delegating some, obviously from an  
33 administrative perspective to the Planning Board. It also seems to me...

34  
35 [beeping]

36  
37 I will finish my sentence if I may, since Karen took so much of it! That's all right --- no!

38  
39 [laughter]

40  
41 I'm teasing! I'm teasing. It also seems to me that as much as the change that we make,  
42 how we go about making that change will be the more -- equally critical from your  
43 perspective, of the recommendations that's associated with the Council. And that it



November 8, 2005

1 needs to be, at this table, a collective process with strong community involvement as  
2 well as input and participation from all of the entities involved. I want to echo Mr.  
3 Andrews' very brief comment about putting in place procedures that are -- and your  
4 comment about transparency -- but also procedures that have public knowledge and  
5 public participation all the way through the process. Thank you.

6  
7 Council President Perez,  
8 Mr. Leventhal?

9  
10 Councilmember Leventhal,  
11 Thank you, Mr. President. Thanks to OLO. I don't want to spend too much of my 10  
12 minutes on congratulating you, but we do appreciate your -- we always appreciate your  
13 excellent work. We always appreciate your excellent work.

14  
15 Council President Perez,  
16 He gets an extra 30 seconds! Praise doesn't count against you!

17  
18 Councilmember Leventhal,  
19 The obligatory, you know, thanks and congratulations to OLO. On Saturday morning,  
20 my wife and two boys and I took a hike along the greenway that commemorates the  
21 Underground Railroad in Sandy Spring, it was organized by Park and Planning. Susan  
22 Soderberg, who is an historian, works for Park and Planning and gave us a fascinating  
23 sense of perspective both for myself, my wife, and our 10 and 6-year-old boys about the  
24 importance of that part of the County. The leaves were turning into their autumn colors  
25 and we visited for the first time the actual Sandy Spring at the end of Meetinghouse  
26 Road. The week before that, my wife and boys and I took Saturday to take a walk in  
27 your district, Ms. Praisner, along Paint Branch Trail, which we had never walked before.  
28 We started at Fairland Road and walked down to Randolph Road, again, to enjoy the  
29 autumn colors...

30  
31 Councilmember Praisner,  
32 I've got more, George!

33  
34 Councilmember Leventhal,  
35 Yes, indeed. And I do think it's important at this time that we appreciate and  
36 acknowledge not only the excellent park staff that maintains those public spaces, but  
37 the planning vision that has set aside almost half of Montgomery County and protected  
38 it from development. Both the Agriculture Reserve, which represents a third of the  
39 county, and when you combine that with our County and state parklands, we have  
40 almost half of Montgomery County that we've set aside from development. Planning  
41 vision, park maintenance. I want to extend my hand to the Park and Planning staff. We  
42 need Park and Planning. We need Park and Planning to continue its work. We cannot  
43 shut it down, even as we acknowledge our responsibility to make it better. I want to

29



November 8, 2005

1 thank the Council President who has taken a very fair and prudent approach for the last  
2 several months in making sure that the OLO inquiry was done in a responsible and  
3 thorough manner. I agree with the Council President. We are all accountable for the  
4 failures in process that you've outlined this morning. For the failure of oversight that we,  
5 the County Council, exhibited. I want to say, of course, that when problems were  
6 brought to our attention, we have engaged in this very thorough and very responsible  
7 exercise. Not to absolve anyone of accountability or responsibility, it often works this  
8 way when a problem -- that a problem needs to be brought to light before there is an  
9 awareness of its extent. It is true, I agree very much, that we, the County Council took a  
10 -- operated with a baseline assumption regarding Park and Planning Commission  
11 procedures and that in our regular meetings with Park and Planning, we tended to be  
12 responsive to issues we were hearing from in the community. In my three years on the  
13 County Council, the issue of trash cans in parks tended to be a major focus of our  
14 interaction with Park and Planning. Why? Was it because we were rash and  
15 irresponsible and didn't care about the development approval and development review  
16 processes? No, it's because we were hearing from constituents and we were being  
17 responsive. It is our responsibility to be a responsive body, but we must also lead. We  
18 must lead now. And we ask ourselves not only whether the failure of oversight at Park  
19 and Planning led to these problems, but what degree of oversight are we exerting over  
20 other departments? This raises questions, and not only with respect to Clarksburg, but  
21 as I know the Planning Board is doing now, with respect to other developments and  
22 we've been reading frequently about other stop work orders which have been issued  
23 and we expect will be issued. We are certainly paying attention now. I think it's also  
24 important to be clear about what this report says and what it does not say. There was a  
25 failure in the process and we are going to work to rectify it. I do not -- I am very cautious  
26 about using words like "scandal." I have no reason to think that there is any reason to  
27 use words like "corruption" or "conflict of interest." We have no reason to think that  
28 planning commissioners or planning staff received any personal gain. And so, we have  
29 buildings built too high and too close to the street. And we have citizens who feel that  
30 they didn't have an appropriate opportunity for input. Those are serious matters. But we  
31 also must be clear about what we have found and what we have not found. I would like  
32 more information over time about how our Planning Board compares to other, similar  
33 agencies in other comparable jurisdictions. My suspicion is that we've set the bar very  
34 high here in Montgomery County and we're disappointed and we're embarrassed. But I  
35 would like to understand, and I hope that Mr. Hanson will assist us in looking at what  
36 procedures exist in other jurisdictions that will assist us with the issues of records  
37 management, approval processes, clarity of decision-making, clarity of who signs off on  
38 which document and when. Now I have just a couple of quick questions. First of all, I  
39 was not clear, Aron Trombka, in what you said about MPDUs. You said that while  
40 changes were being made in the site plan the MPDUs remained stagnant.

41  
42 Aron Trombka,  
43 The MPDU agreement.



November 8, 2005

Councilmember Leventhal,

Okay, here's my question. Is Clarksburg Town Center in compliance with the MPDU law or not?

Aron Trombka,

The MPDU law speaks to the entire subdivision, the subdivision has not been built yet. The planning documents have a road map to get you to the 12.5% by the time the subdivision is done. Where we are now are partial build-out of the units, partial build-out of the MPDUs, while the current number of MPDUs built are less than the 12% of the total number of units that were built, that percentage is in compliance with what the Planning Board or its staff had approved through site plan amendments.

Councilmember Leventhal,

We anticipate when the Clarksburg Town Center is done the legally required amount of MPDUs will be built.

Aron Trombka,

Correct.

Councilmember Leventhal,

Okay, Karen, you started out by saying that this has been a problem that existed for 11 years. I'm sorry, I wasn't here 11 years ago. Why that date? Where does that come from?

Karen Orlansky,

The 11 years goes back to the Council's approval of the Clarksburg master plan, that's where we started, when we went back in it time to do a chronology. I didn't say that the problem existed -- I don't know -- the documents we mostly tracked started in the late '90s. I mean there were some in the mid -- but that's where the 1994 comes from. it's the -- 'cause the history of the rezoning to the RMX zone that this parcel is on came out of the Clarksburg master plan. And there is vision -- there are vision statements and some other statements about the Town Center in the Clarksburg master plan. That was the first official document that spoke to this property.

Councilmember Leventhal,

Okay, I want to ask -- this will be my last question. I want to understand this issue of boilerplate and routine language. It sounds -- that's always valuable for any agency to think through. On the other hand, it seems to me as though the problem is more one of conflicting interpretations. I mean, there will be a process and we would hope that the process would be routinized enough that someone looking into it, as you did, would understand, "Okay, this is comparable. We have this document and this leads to that document and leads to that document." The fact that the documents themselves are



November 8, 2005

1 routinely used would seem to be part of good records management because then you  
2 can actually understand what took place. So I'm hearing a conflict there between routine  
3 procedures, which I think we would want, and lax, lazy, insufficient, inattentive  
4 management, which obviously -- which occurred and we don't want.

5  
6 Karen Orlansky,  
7 What we tried to do is that we -- oh, dear.

8  
9 Councilmember Praisner,  
10 Excuse me, I closed the door on my cup of coffee.

11  
12 Karen Orlansky,  
13 We actually we actually saw both. We saw some where there was a void of policies and  
14 procedures and some areas where there was use of boilerplate language, but where  
15 that gets you into a problem, well, maybe that's where we're having a little problem.  
16 Here's an example. The site plan enforcement agreement requires only three  
17 inspections. At the beginning, at 70% occupancy, and at closeout. That was boilerplate  
18 language that had traveled in site plan enforcement agreements for projects that were  
19 much smaller and much less complex. That's an example where you pick up a provision  
20 that might have worked in a downtown CBD parcel, but probably not for a greenfield  
21 very large complex. So, that's what I meant by the use of a boilerplate that you're on  
22 autopilot and maybe need to think about redoing that requirement, given the project in  
23 front of you. Does that make sense? Does that help?

24  
25 Councilmember Leventhal,  
26 I think so. I'm -- obviously we will have more time to look at the issue of -- documents  
27 and records management becomes critical here. So -- so...

28  
29 Karen Orlansky,  
30 And you keep -- and like the -- what Aron was talking you through --

31  
32 [beeping]

33  
34 Councilmember Leventhal,  
35 No, finish...

36  
37 Karen Orlansky,  
38 Were tables that kept being used over and over again, but the format was confusing, so  
39 you wouldn't want to travel a confusing format. Yeah, I agree, why would you have to  
40 redesign a format each time you do a document? But when you agree on one, agree on  
41 a good one.

42  
43 Councilmember Leventhal,





November 8, 2005

1 It should be a good one, okay.

2  
3 Council President Perez,  
4 Mr. Silverman?

5  
6 Councilmember Silverman,  
7 Thank you, Mr. President. First of all, I do want to in 10 seconds or less, thank OLO. I'm  
8 not going to ask you any questions, 'cause that will cut into my time. I will ask questions  
9 in the next round! I want to thank OLO but I mostly want to thank the folks in Clarksburg  
10 who obviously started the ball rolling for what I would liken to be a thread on a suit  
11 where you say oh, well, I will just pull this little thread out and the next thing you know,  
12 you have literally unraveled the entire suit. That's clearly what happened here.

13  
14 Unidentified  
15 [INAUDIBLE]

16  
17 Councilmember Silverman,  
18 No, that's clearly what happened here. I don't know where to begin, but I will begin by  
19 reading three paragraphs from this report. In some respects, the process operated with  
20 a void of policies, procedures, and guidelines. In other respects the process operated  
21 on autopilot with too much reliance on routine practices and boilerplate language that  
22 was ambiguous and not sufficiently tailored to the CTC Project. There were significant  
23 problems with how the Planning Board and its staff handled questions and complaints  
24 from members of the Clarksburg community about CTC project plans, both approved  
25 and pending approval. "The agency did not adequately comply with requests for  
26 documents and information, sent confusing and mixed messages to the community and  
27 failed to carry out its own timely and thorough investigation. Finally OLO's review found  
28 gaps in interagency coordination that demonstrated disconnects between the Planning  
29 Board and Department of Permitting Services with respect to issuing building permits  
30 and among Park and Planning, DPS, and the Department of Housing and Community  
31 Affairs with regard to the MPDU agreements." This is outrageous and unacceptable in a  
32 County that prides itself on its planning process. The OLO report is nothing short of a  
33 clear indictment of a planning approval and enforcement process that contains  
34 excessive ambiguities about the rules, unclear discretion at the staff level and little  
35 opportunity for public input and an opportunity to participate in the process. You know, it  
36 is easy to point fingers and there will be ample opportunity to do that today and in the  
37 future. But as my good friend and colleague, Mike Subin often likes to say, we have to  
38 fix the problems, not the blame. I know I took it away from you. It's right there! It's right  
39 there! I at least quoted you! I at least quoted you!

40  
41 Unidentified  
42 More time!



November 8, 2005

1 Councilmember Subin,  
2 Okay, we won't call you Joe...

3  
4 [laughter]

5  
6 Councilmember Silverman,  
7 Ooh, that's bad, that's bad! This is clearly a systemwide failure from top to bottom. And  
8 through -- and across a variety of agencies. And we have to move on as quickly as  
9 possible to take the OLO findings and the findings that we will hear from Park and  
10 Planning's management report, and more importantly, in my opinion, Royce Hanson's  
11 years of experience there as well as wisdom and we have to move quickly on this. Now,  
12 the PHED committee started moving in September. We've been conducting oversight  
13 work sessions every two weeks, but I'm here to put everybody on notice, including,  
14 perhaps, unfortunately, my PHED colleagues, that while we're meeting every two  
15 weeks, we will meet every week, we will meet every day if we have to to get the  
16 challenges that have been presented here resolved in an expeditious fashion. I'm not  
17 interested in having us spend time in March, April, May, June, July, and August,  
18 continuing to address these challenges. We can meet as often as we want and we can  
19 move without having to wait for the comprehensive solution. Steps have already been  
20 taken, which I know Park and Planning has outlined. Our efforts starting last July have  
21 moved down this path but the public cannot expect us to continue to support a smart  
22 growth, for example, without providing assurances that we have a system in place that  
23 is, in fact, going to ensure that it is smart. We cannot allow a planning process to  
24 continue where the Planning Board approves developments that come in without a  
25 process in place to ensure that what they're approving actually gets implemented. I think  
26 the timeline that OLO has outlined of perhaps mid-January, for a specific response,  
27 provides us an opportunity where I would hope we would be able to move quickly and  
28 expeditiously to correct the deficiencies that are clearly in our system I do have one  
29 question for you, Karen, and if you run out of time, you can pick it up when we get back.  
30 In term of Council oversight, in terms of looking at a program or two, could you  
31 elaborate on what format that would take? I mean the Council, to the best of my  
32 knowledge, both this Council and previous Councils, and I don't think either the staff or  
33 Planning Board members have ever asked for a sort of top to bottom review of the  
34 regulatory process. And so I'd like to understand, you know, what -- what you sort of  
35 have in mind would be our role in terms of oversight?

36  
37 Karen Orlansky,  
38 How appropriate since in another line of assignment to the office you've asked us to  
39 head up your initiative to do base budget reviews and you will have your opportunity this  
40 year to see three examples of that. And I think what we're going to try to do over the  
41 next 12 months is show you different models. I don't think there's one way. There's not  
42 an off the shelf this is what you do, A, B, C. I think what we're suggesting is that you dig  
43 deeper than just having a conversation on, you know, bottom line activity. You often

34



November 8, 2005

1 have been the recipient of just almost a list of activities as opposed to getting beneath  
2 that and asking questions about -- Aron here who, as you know, has moved over to our  
3 office to head up this effort has done thinking about the kind of questions that you'd ask,  
4 but you'd want to know more about the structure, the staffing, thinking about are the  
5 resources appropriate? Are the guidelines in place? A bit moving into management  
6 oversight, not just activity reporting. In different functions, you'd ask different kinds of  
7 questions. I think that, you know, we will do some work this year that you can say, yeah,  
8 this is what works for us. I think we need to redesign it a little bit each time we get into a  
9 new activity. But you do some comparative work, you could do some benchmarking, but  
10 you're digging deeper and also you're not just doing marginal. I think that's the biggest  
11 thing. So often our budget from year-to-year is the incremental difference from last year  
12 and the reason I think you all moved in this direction was a frustration that your  
13 discussion was always at the margins and we're suggesting we do business a little  
14 differently.

15  
16 Councilmember Silverman,

17 Okay, look forward to continuing to work with you. Thank you.

18  
19 Council President Perez,  
20 Mr. Subin.

21  
22 Councilmember Subin,

23 I haven't had enough time to know where I begin now. Thank you, Steve. I'm not sure  
24 that I know of any individual or entity in this County that commands the amount of  
25 respect that Karen and the staff of OLO respect. And so I think that we need to take this  
26 report and not just give them our appreciation, but use this as a road map for the future.  
27 I'd also like to recognize the citizens of Clarksburg without whose persistence and  
28 discipline we may not have been able to find some of the -- many of the -- all of the  
29 systemic problems that we have until the system actually fell apart in the out years. I  
30 also want to thank Derick Berlage and his staff. I know it must have been hard to go  
31 through the degree of scrutiny and off the amount of cooperation that they gave OLO  
32 during this entire process and frankly, consistent with my friend Steve Silverman's  
33 comment about the thread, lay themselves bare. It was -- I think a -- a fairly courageous  
34 thing to do. They've also laid themselves open to the Inspector General and for reasons  
35 not yet understood, the State Prosecutor. Karen, one thing that I didn't hear and don't  
36 see in the report are references to the budgets of the last couple of years. Were you  
37 able to look at those?

38  
39 Karen Orlansky,

40 We did not do a workload analysis. That would really have been a separate study. I  
41 cannot speak about staffing levels. We looked at -- we tracked one project, but we did  
42 not look at the overall allocation of resources in the agency.

November 8, 2005



1 Councilmember Subin,  
2 I -- I would hope, Mr. Chairman of the PHED Committee, that as you scrutinize the  
3 agency we do look at what has happened to the budgets of the Planning Commission  
4 and Planning Board over the last couple of years. I think what you're going to find is that  
5 we may have been responsive to some budget demands, but we weren't responsible to  
6 the system. And -- and the budgets that have come from across the street and the  
7 budgets that have left here and gone back to the Planning Commission, I believe we'll  
8 find have been rather bereft of taking a close look at their needs. Mr. Leventhal, I think,  
9 properly brought up the issue of the trash cans. Our debates on the planning  
10 commission staff of the last two years have focused more on those trash cans than the  
11 job that they needed to do when we're -- or we're not able to do with the planning and  
12 the regulatory process. So, I think that we, as a Council, are going to need to own up to  
13 the fact that we were part of the system, and what I think was a political process that  
14 deprived them of some of the staff that they needed, which may or may not have caught  
15 some of these problems. Monday morning quarterbacking that issue will be an  
16 impossible thing to do. On the other hand, we do need to make sure that they have that  
17 staff. We haven't looked at their operations in a long time and we need to. Clearly the  
18 thread pulling from the CTCAC has shown us that we need to do that and do that right  
19 away and look at everything they have. I think we're going to need both as a Council  
20 and a community to resist the temptation to rush to judgment here. And -- and to throw  
21 out the baby with the bath water, so to speak. This is a -- an agency with -- with a  
22 national reputation. We may have uncovered some warts here. But that does not take  
23 away from the fact that they do have a national reputation and again, as Mr. Leventhal  
24 pointed out, simply look at our park system and the amount of acreage put in  
25 Agricultural Reserve. It is no accident that -- it is no accident that this Council is being  
26 deluged with requests to go into the Reserve. It's no accident. With the amount of  
27 acreage there, it is a prime target. I hope that our radars fail when it comes to targeting  
28 the target for more development. We do need that methodical top to bottom review, but  
29 let us not also fall prey at the same time to unravel this agency. We also need, I think,  
30 as a Council to understand that in it terms of oversight, these aren't problems that  
31 started in 1994 with the Clarksburg plan. It didn't start in late '90s with owners changing  
32 new plans and requests coming or when the first shovelful of land was broken. These  
33 are issues that have been developing a long, long time. And they predate Berlage and  
34 they predate this Board and they predate the management of Park and Planning. So,  
35 while I don't mean to repeat my good friend Steve Silverman's plagiarism with  
36 attribution, of my words, let's -- let's focus on -- on fixing the problem and not have any  
37 scapegoats out of this. Everybody shares a piece of this blame. Everybody. And those  
38 who did the planning, to those who did the oversight, to those who did the regulating,  
39 and, yes, whether you want to admit it or not, those who did the building and those who  
40 did the violating. One can argue that building height violations of one inch, two inches,  
41 five inches, two feet, whatever it was, really of no moment. Well, the fact of the matter  
42 it's a surrogate for a problem. It's a surrogate for a whole set of problems. So, let's not  
43 try to unfocus everybody by simply saying it was only a couple of inches or only two

36

**This transcript has been prepared from television closed captioning and is not certified  
for its form or content. Please note that errors and/or omissions may have occurred.**

November 8, 2005



1 feet. That's not the issue. The issue is that we violated it. We also, I think, need to take  
2 note of the fact that since that thread was pulled, that there are certain people who have  
3 been working around the clock to try to help fix that. [Rose Kraznow], rumor has it, has  
4 been in her office seven days a week and Mr. Berlage is about to charge her rent for  
5 kitchen and sleeping privileges. And Derick has been very hard at work talking to  
6 people, working with his Board, [John Robinson] and [Meredith Wellington] are here  
7 with him today and have been working hard. So, let's make sure that this planning  
8 process is coordinated. The transportation didn't work. We need to get that moving. We  
9 need to fix all of that coordination. We need to make sure that the staff is there. And I  
10 think we need to take this incredible road map that is here and move on.

11  
12 [beeping]

13  
14 Unidentified,  
15 Oh, wonderful. [laughter]

16  
17 Council President Perez,  
18 The government rests!

19  
20 [laughter]

21  
22 Council President Perez,  
23 Ms. Floreen?

24  
25 Councilmember Floreen,  
26 Thank you. I have a somewhat personal take on all of this. I was a Planning Board  
27 member in 1994, participated in the drafting of the Clarksburg plan. And so I am really  
28 very disappointed that it took our staff here now as a Council, OLO's staff, to point out  
29 the large series of issues that we, as a Council, need to work on to sort out the  
30 implementation process. Like everybody else, you've done a great job. Thank you. But  
31 the real thanks, as everyone says, goes to the Clarksburg residents because it was  
32 really their point that finally triggered some actual review and investigation into the  
33 whole shebang. Everyone is going to -- I guess people will try to point fingers and do  
34 various things in response to all that. I think we -- the message to the Council here, I  
35 think, is that just as you're saying to the Planning Board, what's your words, make sure  
36 what you say is what you mean. And make sure that what you adopt is followed through  
37 in terms of the implementing documents, we need to take that to heart, as well.  
38 Because I think our work in our master plans and our text amendments, which is more  
39 or less daily exercise here, allows us to put words down without necessarily being  
40 reminded of the details of getting those words into action. The Clarksburg residents  
41 have only asked to get delivered what was promised. That's a simple enough request.  
42 And that it has taken more than a year to figure out what was promised, I think, is the  
43 real travesty of the situation. You know, we've been doing business as usual, down

37

**This transcript has been prepared from television closed captioning and is not certified  
for its form or content. Please note that errors and/or omissions may have occurred.**



November 8, 2005

1 there and up here for a number of years. I really think this requires us to relook at how  
2 we handle the planning process. And certainly the implementation process was the  
3 issue with Shady Grove; big pictures, big expectations, can we deliver in a predictable  
4 and reliable fashion? Are we using too many words to satisfy too many constituencies  
5 without worrying about whether they can actually be translated into real and reliable  
6 communities? I heard yesterday at the forum that Parks and Planning conducted on  
7 Boulevards and Communities. Everyone needs to agree at the very beginning, exactly  
8 what you mean and then let the development proceed. I think that's a lesson that we  
9 need to think about very seriously as to how we proceed. Because we are great  
10 architects of words. I think we need to worry more about how we are great architects of  
11 communities. That being said, I think the good news is that the debate is not about the  
12 integrity of the Clarksburg master plan, which is really the last time, I think, the Council  
13 took any significant action on Clarksburg And it's not about the growth and density  
14 associated with it. It's how it was implemented and how it is being implemented. I do  
15 have a typo to bring to your attention. Which would be the T&E Committee has already  
16 taken up the Clarksburg transportation issues again last week on, I guess it was the  
17 third, but you have it on the 10th. That was the original schedule. On page 134. And we  
18 have at least -- the good news is that we have identified someone who is going to  
19 coordinate the Clarksburg roads, Joe [Chung] from DPS. That's a good thing. I think the  
20 challenge is working with Park and Planning and the different agencies to figure out  
21 when we need to work together and get out of our molds in terms of job descriptions,  
22 see a problem that's coming and devise the right solution. It shouldn't be because  
23 community members can't figure out what the rules are. And then it takes us a year or  
24 apparently not, more than that -- to give them the answer. I have some actual specific  
25 questions for you. We'll just have a short time to look at the report, so, we all know we  
26 will have more, but do you have some thoughts on how the community concerns could  
27 have been handled differently at the get-go? Karen? Or do you not want to answer that?

28  
29 Karen Orlansky,

30 I will give an oversimplified area, which is that the agency needed to have a structure for  
31 how it would sort incoming questions and concerns and procedures on how you  
32 respond methodically, thoroughly and carefully. These are complex documents, people  
33 need a tutor, they need someone to help them understand what they're looking at. So, I  
34 think in an initial response -- I mean it's overall, you need a structure, you need a  
35 system for responding to inquiries. I think on the master plan side the agency rocks, you  
36 know, in terms of the community interaction. In development review, I don't think the  
37 system was in place.

38  
39 Councilmember Floreen,

40 Well, the community reaction to much of all of this has been there was a culture that's  
41 discouraged or marginalized residents' concerns. Did your review reflect anything on  
42 that point?



November 8, 2005

1 Karen Orlansky,

2 No, it's more that I see a connection that because the decision documents were not  
3 easy to decipher, you needed a decoder ring and because the documents were not well  
4 kept, sort of those management deficiencies really got in the way, even of the best  
5 intent of wanting to respond.

6  
7 Councilmember Floreen,

8 Okay. Do you -- do you think that the Board delegated authority to staff that it didn't  
9 have?

10  
11 Karen Orlansky,

12 I'm not touching that one. I think that's a legal question.

13  
14 Councilmember Floreen,

15 Oh, okay, okay. Clearly, you've identified the issue of the lack of clarity about what was  
16 a controlling document. Mrs. Praisner asked you about that. So, that's one of the tasks  
17 that you have identified for the Council, to spell that on out in black and white? And  
18 you're really suggesting that the Council now step in and define as regulatory rules what  
19 exactly the functions of the Board should be, and the details of all these steps. That's  
20 what I'm looking at in your recommendations, is that correct?

21  
22 Karen Orlansky,

23 Yes, I think that you all have delegated that process by statute and I think when it was  
24 written no one realized how it needed a little next level of guidance. And I think it's a  
25 good time to do that.

26  
27 Councilmember Floreen,

28 So you're really saying look at the site plan rules, look at the subdivision rules, perhaps,  
29 or development plan rules all together and spell out all the controlling steps.

30  
31 Karen Orlansky,

32 Yes, and think about how the documents, how the different steps relate to one another,  
33 perhaps rethink your expectations for what happens at each step, what's allowed to  
34 change, what's not allowed to change. And you may think about using some in statute  
35 and some in regulation, you may not want to put it actually all in law.

36  
37 Councilmember Floreen,

38 Are you suggesting that we get away from the guidelines approach that the Park and  
39 Planning Commission has been using to guide its decision-making process?

40  
41 Karen Orlansky,



November 8, 2005

1 I think that's a great question. I think as you work this through, you'll have to decide how  
2 much you want to put in statute and regs that you write and how much you want to  
3 delegate down to the agency, that goes on the list.

4  
5 Councilmember Floreen,  
6 So you're really talking about a very significant reclarification of roles and  
7 responsibilities at the Planning Board versus its staff level.

8  
9 Karen Orlansky,  
10 Absolutely, and then you have different -- you know, you guys are the Legislature so  
11 you have different tools at your disposal through both the law, through regulation, and  
12 through your budget and oversight of the agency to get the job done.

13  
14 Councilmember Floreen,  
15 I'm glad that Mr. Hanson has agreed to sign on at no cost...

16  
17 [beeping]

18  
19 ...to the Council. Well, thank you, we're obviously going to work very closely with all of  
20 you, but I do think that the message to the Council should be just as plain as it is to the  
21 Planning Board. We need to be clear in the future about what we really, really mean and  
22 what we do not mean. And I think that's a lesson for all of us to take away. Thanks for  
23 your very good work.

24  
25 Council President Perez,  
26 Mr. Denis

27  
28 Councilmember Denis,  
29 Thank you, Mr. President. Many years ago what George Orwell coined the phrase  
30 "double-speak" an he pointed out that corruption of language leads to corruption of  
31 thought and that leads to corruption of action. George Orwell meet Montgomery County  
32 planning process with its undefined terms, boilerplate language, and reliance on  
33 boilerplate language makes people lazy, that's one of the problems with it, and  
34 ambiguous phrases. Last week the 5th International Plain Language Conference  
35 convened in Washington, this week the Montgomery County Council is considering PIF,  
36 DAP, RMX, AGP, OLO, PDQ, MPDU and PATR, and ITPCC is not far behind.  
37 Montgomery County's double-speak planning jargon, a roiling ocean of initials and  
38 acronyms has finally burst its linguistic levees. The hot air has produced such global  
39 warming that Hurricane Clarksburg threatens permanent damage. Our planning  
40 language should fit the public's needs, not the needs of those who write the words.  
41 Being clear is harder if you really want to be understood. I have become convinced that  
42 some do not want to be understood, and that they use language to deliberately confuse.  
43 At the D.C. conference last week a Golden Bull Award for gobbledy gook was given,

40





November 8, 2005

1 and I'm sure my colleagues will appreciate this, to Donald Rumsfeld who said  
2 something that could just as easily have been said by some of those who have been  
3 testifying on Clarksburg. Reports that say something hasn't happened are always  
4 interesting to me because, as we know, there are known knowns, there are things we  
5 know we know. We also know there are known unknowns. That is to say we know there  
6 are some things we do not know. But there are also unknown unknowns, the ones we  
7 don't know we don't know. Secretary Rumsfeld, say hello to land use in Montgomery  
8 County. Montgomery County's planning process to paraphrase Churchill is a "riddle  
9 wrapped up in a mystery inside an enigma." The Delphic Oracle was a model of clarity  
10 by comparison, or the ancient practice of judging events by the flight of birds. What I  
11 want to know, among other things, is why someone abruptly resigned from the Planning  
12 Board. If everything was so benign, why did this individual abruptly resign? If she said  
13 something that was untrue, why? We've all learned the alphabet soup, now it's our job  
14 to find out how the soup was served. The people of Montgomery County don't care  
15 about acronyms or organization charts. They want to know who was supposed to do  
16 what, when, and whether the job got done. And if it didn't get done, they want to know  
17 how we are going to make sure it doesn't happen again. The people of Montgomery  
18 County know by now that there was no shortage of plans and no shortage of symptoms.  
19 They know just as well that there was at the very least a profound failure to be  
20 proactive, a deep inability to execute. What I want to know, among other things, is the  
21 time line. Where were the key players in the days and hours right before, during, and  
22 after the Clarksburg scandal broke? What were key people doing? Who were they  
23 talking to? And e-mail, what did the e-mail say? Perhaps only an independence  
24 prosecutor with subpoena powers can obtain such information in a fair and lucid way.  
25 Decisions that should have been deliberate may have been improvised or not made at  
26 all. That's a just not good government. The Planning Board acknowledges it is their  
27 responsibility to fix things and they are seeking to do so. It is our responsibility as a  
28 Council to make sure that process of self-examination moves forward quickly and that  
29 we make whatever changes are prudent.

30  
31 Council President Perez,

32 Okay, wow! I appreciate the self-regulation of my colleagues. I have some questions,  
33 but I appreciate everybody's self-regulation. As I listen here, I'm struck by the good  
34 news/bad news report that I think is before us. The bad news is that the problems are  
35 serious. The good news in my mind are that the problems are fixable, and it's really -- a  
36 lot of this is going to come down to Management 101 and Coordination 202. That's what  
37 we need to do here. And I hope that in the process of implementing Management 101  
38 and Coordination 202, that we won't allow flexibility to become a four-letter word,  
39 because in the new Montgomery County, where we have urban, suburban, and rural  
40 pockets, the flexibility in our planning process, I believe, is one of its strengths. But what  
41 I've certainly learned today is it needs to be a flexibility governed by clear parameters,  
42 which we don't have at the moment, and adequate opportunity for public input. And I  
43 wholeheartedly agree with my friend and colleague Phil Andrews on the need for public

41



November 8, 2005

1 input. We need to address the reality that at the moment that people at Park and  
2 Planning are gun-shy and so the whole process has shut down, effectively. That  
3 perhaps is a slight overstatement but it certainly ground to a trickle at best. I spent the  
4 better part of a decade working with law enforcement organizations that had broken.  
5 And the manifestation of the break was that there was a horrible incident or set of  
6 incidents, sometimes people were killed. Sometimes people had money stolen from  
7 them or other corrupt activities. And one thing that I learned and the good news is none  
8 of that exists here. But what I did learn from studying law enforcement organizations  
9 and working to fix problems was that I could trace every single failure to failures in first-  
10 line supervision. I learned that the sergeant -- meaning no disrespect to the Executive  
11 Director -- was the most important person in the organization. And I suspect that Mr.  
12 Subin and Mr. Knapp and others who had the honor and privilege of putting on the  
13 uniform have had similar experiences. And so one of the questions I have is have we  
14 equipped the first-line supervisors, and in the end we can conduct and will conduct  
15 significant oversight, but if we don't equip the sergeants in this case, the first-line  
16 supervisors in this division, with the clarity and tools to do their job, I think we are going  
17 to continue to have problems with Management 101. What were your observations as it  
18 related to whether or not the first-line supervisors, the sergeants, were equipped to  
19 address the situations at hand?

20  
21 Karen Orlansky,  
22 I'm not going to point fingers at anybody.

23  
24 Council President Perez,  
25 I'm not asking you to point fingers, and it's not an indictment of people personally. I think  
26 we need to know if we are going to fix management problems, I would respectfully  
27 submit we need to figure out how we get first-line supervisors equipped with the  
28 statutory instruction and the skills necessary to carry out the job.

29  
30 Karen Orlansky,  
31 I actually think that that is probably something that doesn't belong in statute...

32  
33 Council President Perez,  
34 I agree.

35  
36 Karen Orlansky,  
37 ...that in terms of expectations within the agency for a solid training program and a solid  
38 understanding of job responsibilities, I think that's fair thing for -- to expect in an  
39 organization. I mean, my observation is that, you know, everyone, all the staff folks,  
40 were doing the best job they could in an environment that was operating without a lot of  
41 rules and procedures. And in -- many of the front-line supervisors again were doing the  
42 best job they could in an environment that lacked a structure in terms of just a culture of  
43 documenting to the file, a regulatory environment. And I think hypothesis that we have

42



November 8, 2005

1 about that was simply that the agency for so many years has been working in the  
2 planning venue and that some in that environment -- the need for that to rules, regs,  
3 structure, careful attention to documentation and file-keeping and all of that, there's  
4 different consequences of that but they're not the same as in a regulatory environment.  
5 So as the agency has traveled more and more into the implementation business and I  
6 think it was one of the Councilmembers who said that this morning, it's just that the  
7 structure of the management just didn't keep up with that. And it's nobody's fault. It's not  
8 that. It's just something that needs to be attended to.

9  
10 Council President Perez,

11 I'm looking forward to the help of all the management consultants in that because if we  
12 don't, obviously equip them with the clarity, then we'll have a problem, but that's only  
13 half the battle. We need to make sure that -- I mean, frontline flowers, the skills that  
14 made them good prosecutors were often times precisely the skills that made them poor  
15 managers. And we need to understand that and address that. And I don't mean many  
16 any disrespect or mean to point fingers at anyone, but this is the nitty-gritty stuff that is  
17 really going to make the difference in whether we solve this problem. In the consumer  
18 work that I have done, one other observation I have made is that there are a number of  
19 statutes in place that effectively empower what we often call private attorneys general,  
20 because so many of the consumer problems across America because of resource  
21 failings or the lack of people to investigate, we empower private attorneys general by  
22 having things like attorneys' fees. I mean, the reality here in Clarksburg, as I understand  
23 it, is that but for the work of the community, we wouldn't -- we may not be here today. It  
24 may not have been uncovered, because it wasn't being uncovered by people within  
25 government. And it strikes me that people shouldn't have to quit their jobs and give up  
26 their professional livelihoods to become full-time advocates for the community that they  
27 want to build. And so I'm wondering have you observed -- and maybe this is an action  
28 item for the future -- other communities or other laws in other communities that provide  
29 for, in appropriate circumstances, attorneys' fees or other fees for private attorneys  
30 general who are out there uncovering violations? Have you had an opportunity to study  
31 that?

32  
33 Karen Orlansky,

34 No, sir.

35  
36 Council President Perez,

37 Okay. Well, maybe -- I don't know if it's you or someone else but I would certainly be  
38 interested. Because again what we've learned from this experience is but for the  
39 activities of some citizen activists, we not have uncovered this, and we immediate to  
40 have redundancies in our system to make sure that the internal systems are in place so  
41 that these don't happen again. But fail-safes are in place so that if there are outside  
42 stakeholders who uncover misconduct or violations that there are sufficient inducements  
43 to do so and you don't have to quit your day job because I think that's asking too much

43



November 8, 2005

1 of communities to quit your day job to get things that you ought to be able to get. Aron,  
2 you and Councilmember Leventhal had some interaction regarding the MPDU issue. I  
3 think you said by the end of the project they will have complied with the 12.5%  
4 requirement; is that right?

5  
6 Aron Trombka,  
7 That seems to be in the works. There's no indication otherwise.

8  
9 Council President Perez,  
10 Is it also fair to say that a disproportionate number of MPDUs will be conducted at the  
11 last phase of the project?

12  
13 Aron Trombka,  
14 The last phase of the project is still to be determined through the site plan process  
15 although that MPDU location plan that I referenced in the presentation, based on --  
16 which was incorporated in the Phase II site plan -- did put approximately -- low 40%, 41,  
17 42% of the MPDUs in a phase that would have included fewer than 30% of the total  
18 units.

19  
20 Council President Perez,  
21 Right. So I mean, so I think if I understand then the answer, the answer is that we are in  
22 compliance with the MPDU law...

23  
24 Aron Trombka,  
25 Right.

26  
27 Council President Perez,  
28 ...but within -- but the reality is that a disproportionate number of MPDUs will be  
29 constructed at the end of the process. In other words...

30  
31 Aron Trombka,  
32 The approval given by the Planning Board -- and it conformed with the approval as of  
33 May or June of 2002 -- the MPDU agreement complied with that -- did not implement  
34 the MPDUs at a 12.5% rate for each phase. It did have a larger MPDU requirement in  
35 the later phases than it did in the earlier phases.

36  
37 Council President Perez,  
38 That simply raises the policy issue that we would and should take up about whether  
39 we're comfortable with allowing things to happen at the end just like are we comfortable  
40 with roads happening at end. That's the policy issue. Nothing untoward or illegal has  
41 occurred. One final question for Karen. If I were a reporter or a -- let me back up. What's  
42 the most important take-away item that we have to accomplish in the next six months?  
43 Or two or -- I'm not going to nail you down to one.



November 8, 2005

1  
2 Karen Orlansky,  
3 That's why we did a four-page summary.

4  
5 Council President Perez,  
6 No, I know, but we're going to be working -- I mean, I know as a prosecutor you live with  
7 a case, and you have a half a dozen or a dozen items that come out of it but invariably  
8 for me there were two or three broader themes that really were drum beats that dwarfed  
9 the others and I'm wondering if you had that same experience.

10  
11 Karen Orlansky,  
12 Actually, I do have one, and it's really more to do with what we do, and the role that the  
13 office serves in terms of what we do for the Council. And I think there's a lesson that  
14 people had an assumption something was working well, and it's turned out it wasn't, and  
15 it needed some improvement. And when I look at the work program that we get  
16 assigned and understandably we tend to go where people think there are already  
17 problems and I think it speaks to thinking through a more methodical way of working  
18 through programs and functions and -- yeah, high five -- because that's a real take-away  
19 as you all pass budgets that include a lot of money for very, very important programs.  
20 And anyway -- so I take that and perhaps how you use your limited oversight resources,  
21 we might want to think about that going forward as well. I think the other lesson, -- and I  
22 really do credit my friend Sue, who has spent a lot of hours thinking and talking about  
23 this -- is just that in terms of your role as the Council, there's a longstanding and truly  
24 laudable tradition of Councilmembers staying out of individual projects. And I would not  
25 at all recommend that that be changed. There's very good reason for Rockville to keep  
26 arm's length from individual decisions on individual projects. But I think again, from an  
27 oversight perspective, what kind of got confused was keeping that arms length  
28 perspective doesn't mean you needed to stay away from looking at management  
29 systems, adequate resources to carry out the mission -- do you know what I'm saying --  
30 that there sort of was a confusion of role perhaps out of good intent. So those two take-  
31 aways.

32  
33 Council President Perez,  
34 Great, I want to thank my friends in government, I know we have members of the  
35 Planning Board here, and we have Elizabeth Davison, Robert Hubbard, and in the  
36 Coordination 202 context, in two weeks when we come back -- because again I don't  
37 think it's fair to respond to a report that you're sort of eyeballing while you're  
38 simultaneously listening, that wouldn't be fair -- but I want to learn more, for instance, in  
39 the MPDU context how we will fix those deficiencies that were identified. Again, I think  
40 they're imminently fixable and I think one of the fundamental challenges of good  
41 government is ensuring that agencies across government communicate and coordinate  
42 and so we have a seamless web of government service. And I think just -- I watch the  
43 FBI and the ATF and the DEA -- this challenge, this is not a challenge unique to

45



November 8, 2005

1 Montgomery County, it's a challenge across government. So I'm looking forward to  
2 learning how we can accomplish the coordination task. We've got a number of lights so  
3 what I'll suggest is that we stick to five minutes this time. Otherwise we will not get out of  
4 here. So if others -- feel free to demur if you have no additional questions. You will get  
5 extra points for that. Mr. Knapp.

6  
7 Councilmember Knapp,  
8 Thank you, Mr. President. Karen, if you guys could talk a little bit more about this notion  
9 of Condition 38 and kind of how it came about to begin with, and just how it's been  
10 implemented, just how it's been managed? It seems as though it's been the crux of  
11 either the -- kind of the cause or the root cause of a number of things, so it would be  
12 helpful to have of a better understanding of what it means.

13  
14 Sue Richards,  
15 As we said, Condition 38 was a condition of approval that was added to the Planning  
16 Board's approval of the site plan opinion that they approved in March of 1998. I think--  
17 and what we heard during our interviews is that it's possible there was a similar -- there  
18 are similar conditions for other approvals out there.

19  
20 Councilmember Knapp,  
21 So condition 38 is specific to this Clarksburg...

22  
23 Sue Richards,  
24 It is specific to Clarksburg Town Center Project. I think the other -- but it may have been  
25 used in other projects as well. I think what's important about it was that it was not very  
26 explicit in both sorting kind of the, you know, the scope and the number of the  
27 amendments that could go through. It was not explicit procedurally, and it was put on  
28 top of language in the law that was not specific either. During our review of the  
29 documents, we did find a couple of -- like one dated memo and one more recent draft  
30 memo that were efforts that had been made internally within the Planning staff to try and  
31 bring some structure to the amendment process. But clearly that's an area that needs  
32 more work both in terms of the law and also in terms of better management procedures.  
33 I think what you find in other places where there's maybe a little more disciplined  
34 approach to this is that you have both, I guess, language that talks -- for example an  
35 amendment can't approve more than a 10% change to the floor area of a project or  
36 something like that. So you have limits, and then there's an automatic system that would  
37 kick it back to the Planning Board.

38  
39 Councilmember Knapp,  
40 You're saying an automatic system so if exceeded one of those...

41  
42 Sue Richards,

November 8, 2005



1 So if it exceed 10%, it would automatically go either to a higher level of review, for  
2 example now everything's going through the Planning Director or, even further, back to  
3 the Board.

4  
5 Councilmember Knapp,  
6 How would that have kicked back, who would have caught that? Would the individual...

7  
8 Sue Richards,  
9 Well, even to have it kick up to the Planning Director or kick up... If I think, as Mr.  
10 Andrews said, some of these amendments had gone back to the Board in public  
11 session early on when they were being reviewed, there would have been a very  
12 different public understanding of -- that there was change in process. There would have  
13 been a better public record so when questions came up last Fall, there would have been  
14 more institutional knowledge of what the history of the project had been.

15  
16 Councilmember Knapp,  
17 So none of the changes were necessarily made under Condition 38 were captured in  
18 any specific place. They were just kind of...done.

19  
20 Sue Richards,  
21 Well, I mean, there's documentation for them. The documents that we spent a lot of time  
22 looking at in the last couple months, there are site plan amendments drawings with  
23 stamps on them that document the changes. There are, you know, application forms  
24 that are filled out and there were fees that were paid in order for these amendments to  
25 go forward. So there is, you know, there's documentation there. I think even more so  
26 than looking at some of the autopilot charts it took a little effort to pull together exactly  
27 what that meant in terms of the changes to the approvals that the Board had given early  
28 on. There was also discussion during the -- when the Board did the site plan Phase II  
29 amendments, you know, there was public discussion of what the amendments were.  
30 But it was a shorthand reference to them. And so there was just no understanding that,  
31 in fact, a new concept plan had been done and was being implemented kind of  
32 incrementally.

33  
34 Councilmember Knapp,  
35 Okay.

36  
37 Karen Orlansky,  
38 Mr. Knapp, it might help, to the extent that our report is documented carefully, what we  
39 were able to find. I mean, that's in the report in the middle of about page 58, 59, and you  
40 can look at those...

41  
42 Councilmember Knapp,  
43 Okay.



November 8, 2005

1  
2 Karen Orlansky,  
3 ...and we'd be the first to say it's not complete.

4  
5 Councilmember Knapp,  
6 No, understood, understood. Since we're only going five minutes, I want to make two  
7 observations. First I agree with Mr. Andrews and what everybody has stated, the notion  
8 of public input is going to be critical. However I would also urge us to be careful  
9 because we already put a lot of demands on folks who have other lives and to think  
10 about how we do this in a way that actually recognizes that the community is the  
11 community and has lives, and expects us to be doing the right things. And so how do  
12 we make them aware of things without necessarily mandating... [beeping] ...or requiring  
13 that they significantly engage in that process. And if they don't have lots of people  
14 engaged then it's not a real and fruitful process, because I'm not sure how realistic that  
15 will be at the end of the day. And so we need to come up with a good way to do that that  
16 works. And the only other thing I guess, Karen, in response to your question earlier was  
17 the notion of lack of standards and people there by not -- and staff level not being able  
18 to, you know, not keeping track of things and records. That bothers me. The notion that  
19 we have good people, that we all say we have good people and the notion of not  
20 exercising good common sense that, "Wait a minute, I'm making changes to significant  
21 documents and not being able to track that and keep track of those things." And  
22 somehow that -- I don't disagree that that's a lack of management oversight, by the  
23 same token we're engaging in significant processes. Hopefully we are hiring folks that  
24 recognize that that's a pretty basic thing to do, and if it's not being done, come up with  
25 ways to get there from here.

26  
27 Council President Perez,  
28 Ms. Praisner.

29  
30 Councilmember Praisner,  
31 The comments about the base budget review are heartening to me, but I think this is  
32 more complicated than base budget review because it -- base budget assumes to some  
33 extent that the procedures and structures that you're evaluating are in place and you're  
34 monitoring the revenue from year to year and the outcomes. But if you want to -- you  
35 have to first have those other things in place first and I really look forward to Aron's input  
36 for us in MFP and then the whole Council on that issue. I would remind everyone that  
37 Marlene Michaelson on our staff has been pushing for more and more comprehensive  
38 and a different way of looking at the Park and Planning Commission budget for some  
39 years with modest success. And so I think we have someone well-positioned to help us  
40 with that process. It also seems to me and I have a couple of questions, one very  
41 quickly, answer yes or no. Did you use -- did you look at all at the availability of  
42 technology or the differences in technology systems, et cetera, and how technology  
43 may or may not have played a role in this issue or could have helped?





November 8, 2005

1  
2 Aron Trombka,

3 Only in an ancillary way. We were aware of the technology and we must also caveat  
4 that the technology that was in place while most of this was developing is different than  
5 the technology in place now. But some of the basic recordkeeping management  
6 problems were linked to the lack of use of technology.

7  
8 Councilmember Praisner,

9 Right, I think as we look in MFP again that technology systems and the issues across  
10 departments in County government, we'll also have to look at it in relationship to other  
11 agencies as we've looked at the EAP systems and other things. Did you look at all on  
12 the issue of not just stovepipes across agencies but stovepipes within agencies and the  
13 issue that has been raised in the past at the meetings on Park and Planning on the  
14 biannual process of the immigration or work between the Community Planning folks  
15 who are in essence those who have some responsibility for implementing the master  
16 plans versus the development review process people who are responsible for reviewing  
17 specific projects?

18  
19 Sue Richards,

20 I think we looked at it in terms of recognizing that when the citizens were raising  
21 concerns in the Fall they were receiving answers both from folks in Community Planning  
22 and in Development Review and that's partly because they were raising questions in --  
23 that fell into both areas, but we did see -- and I think Karen had mentioned this before,  
24 we didn't see kind of a clear delineation of -- it's very important that the planning  
25 responsibilities and what the kind of goal of what you're doing in planning is very  
26 different than it is on the regulatory side and we didn't see kind of that division.

27  
28 Councilmember Praisner,

29 Right when the Planning Board came to us and made an argue for continuing  
30 Community Planning structured the way it is with community planners who stayed in a  
31 geographic area, their argument and their rationale was to have folks whose  
32 responsibility it was for implementing -- monitoring the implementation of master plans,  
33 not just drafting them. So that Development Review people would be looking at the  
34 development, but the Community Planners would be looking at it in relationship to the  
35 master plan. So I guess if what you're telling me is that the issue identified by the  
36 Council or at least this Councilmember through the biannual review process is an area  
37 where we need to work on from a standpoint of clear responsibilities but also clear  
38 acknowledgement maybe from the Planning Board level of recognition of the role and  
39 responsibility for Community Planning.

40  
41 Unidentified,

42 Absolutely.



November 8, 2005

1 Councilmember Praisner,  
2 In that process. Did you look at the zoning ordinance at all from a standpoint of optional  
3 development standards or optional plan development standards and other issues and  
4 how they're implemented or not and where there are deficiencies or not?  
5

6 Karen Orlansky,  
7 Only in RMX and our comments about the RMX Zone are in the report but we didn't look  
8 at other zones.  
9

10 Councilmember Praisner,  
11 You didn't look at it in the broad standards versus the specific standards? Okay, my  
12 time is up. Thank you.  
13

14 Council President Perez,  
15 Okay, Ms. Floreen.  
16

17 Councilmember Floreen,  
18 Thank you. I have a structural basic question about your work. As you know, Park and  
19 Planning is not a County agency. It is a product of state law. It's a product of the  
20 Regional District Act. Good and terrific history there. Did you find that any of that  
21 structure interfered in any way in your ability to conduct that investigation, or does it  
22 raise any issues in how this Council can conduct oversight? I know that there have been  
23 some intimations that might be an issue vis-à-vis the Inspector General and I'd like your  
24 -- to see what you think about that issue.  
25

26 Karen Orlansky,  
27 Just based on own experience and it could be that we had preexisting working  
28 relationships with the agency that had been established so we didn't run into the same  
29 issues that the Inspector General ran into. But we got every document that we asked  
30 for, unbelievable staff cooperation, people made time for us, they gave us what they  
31 had. I mean, obviously what we found is it's not all that we had hoped it would be, but  
32 they were unbelievably responsive. We sent down three formal, long data requests and  
33 that's -- it was just awesome. I know people worked extra hours to try to accommodate  
34 our needs. The issues we had in terms of access to interviewing Planning Board  
35 members and legal staff had way more to do with concerns raised by the General  
36 Counsel in terms of the ongoing violation hearings and potential ex parte  
37 communication and from my perspective I never heard sort of the structural issue of,  
38 you know, the Office of Legislative Oversight has no business interviewing members.  
39 So really, you know, A+ in terms of cooperation and trying to get back to us quickly.  
40

41 Councilmember Floreen,  
42 So in your assessment of the overall effort, and in your work, you haven't seen anything  
43 then that points to Regional District Act type issues?



November 8, 2005

1  
2 Karen Orlansky,

3 In our work it was very collegial (sic), very professional, very collegial (sic). We all had  
4 jobs to do and everybody did what they needed to do.  
5

6 Councilmember Floreen,

7 So, okay, you don't see that that's an area that we need to take a look at, from our  
8 perspective. That's very helpful. And Ms. Praisner asked you a little bit about the floating  
9 zone issue really that is out there and you said you identified it with respect to the RMX  
10 Zone and clearly the Planning Board itself had some issues with what it meant based on  
11 your report. Are you suggesting that our work program should consider the Council  
12 getting more -- apart from working out better parameters for decision-making at the Park  
13 and Planning level -- are you suggesting or did you give any thought to having the  
14 Council more involved in setting, finding elements of plans? I mean, Development  
15 plans, Council approves it, did you think about whether the Council should take on that  
16 responsibility more in these situations?  
17

18 Karen Orlansky,

19 The only suggestion, and we'll probably have more opportunity in a work session to get  
20 into it, was the suggestion that we heard along the way that perhaps at site plan it'd be  
21 re-thought into elements that are binding and elements that are not binding. And so  
22 perhaps there is clearer understanding when people walk away from an approved site  
23 plan what might change going forward. You know, if you look at the public relations  
24 material about the process, it suggests that site plan approval is the end. And in a  
25 complex project like CTC, that obviously has turned out not to be true. Understandably,  
26 site changes mark changes, lots of things, but I can appreciate how it leaves a  
27 misunderstanding perhaps of what site plan approval is.  
28

29 Councilmember Floreen,

30 So that would be a job for Park and Planning though, not -- you're not suggesting that  
31 Council get engaged in that part.  
32

33 Karen Orlansky,

34 In terms of perhaps outlining the process, that would be in statute or regs, but actually  
35 doing it on individual projects, that's probably something I imagine you would want to  
36 continue to delegate.  
37

38 Councilmember Floreen,

39 Then a final question I have. I've been shown a chart -- and I don't know that you've  
40 seen it -- that shows, I don't know...  
41

42 [beeping]  
43

November 8, 2005



1 ...50 to 100 steps that occur in the development process after something leaves the  
2 Planning Board. Have you seen that?

3  
4 Karen Orlansky,  
5 I've seen an old one that was floating around when we were working on the DPS sunset  
6 evaluation. I haven't seen a recent one, I'd love to see it.

7  
8 Councilmember Floreen,  
9 Well, I just ask that -- I hope your work program will allow you to continue along with us.

10  
11 Karen Orlansky,  
12 That would be a decision of the County Council.

13  
14 Councilmember Floreen,  
15 Indeed, it will. Okay, thank you.

16  
17 Council President Perez,  
18 Okay, there are no further lights. I want to thank you again for your presentation. We're  
19 now entering the next phase of our effort to restore the public confidence in this  
20 process. And I look forward to returning to this topic two weeks from now when we hear  
21 from the various government entities and I'm continuing to reach out to various  
22 stakeholders in the development world and in the community and elsewhere. And we  
23 will forge ahead. Thank you.



November 8, 2005

1 Council President Perez,  
2 This is a public hearing on Expedited Bill 54-05, South Germantown Recreation Park –  
3 Tennis Center Lease – Amendments. A Planning, Housing, and Economic Development  
4 Committee worksession will be scheduled at a later date. Persons wishing to submit  
5 additional information for the County's consideration -- or the Council's consideration  
6 should do so by November the 18th. There are no speakers. Agenda item 7 is a public  
7 hearing on special appropriations to the '06 operating budget for the Department of  
8 Permitting Services for the creation of a site plan enforcement, inspection, and review  
9 process in the amount of \$474,250. Action is scheduled following the hearing. Before  
10 beginning your presentation, please state your name for the record. I think the one  
11 person signed up is Judy Koenick. I don't see her, so we'll move on. The record should  
12 reflect it is 20 minutes after the time in which we were started. Oh, Judy, we were just  
13 about to finish up. Let's go. You're on. Three minutes.

14  
15 Judy Koenick,  
16 [ INAUDIBLE ].

17  
18 Council President Perez,  
19 Okay, press your button, you've got three minutes.

20  
21 Judy Koenick,  
22 Okay, this is on the issue of whether we provide more funding for Permitting Services, if  
23 I'm correct, and Park and Planning Commission. In an effort to try and eliminate the  
24 screw ups there are occurring now with the building. Am I correct?

25  
26 Council President Perez,  
27 Site plan enforcement, inspection review process.

28  
29 Judy Koenick,  
30 Okay. If you give them more money or anything else so they can do a better job of  
31 inspecting, in effect you're acknowledging that you've failed to provide adequate funding  
32 and therefore you're responsible either directly or indirectly...

33  
34 Councilmember Silverman,  
35 Excuse me, I apologize. This is for DPS, not for Park and Planning.

36  
37 Judy Koenick,  
38 Well, I understand that.

39  
40 Councilmember Silverman,  
41 Okay, I just wanted to make sure that was clear. There isn't a dime in this special  
42 appropriation that's going to Park and Planning.



November 8, 2005

1 Judy Koenick,  
2 We hope.

3  
4 Councilmember Silverman,  
5 No, there isn't a dime that is going -- I'm the sponsor of this, Judy. I know what I  
6 introduced.

7  
8 Judy Koenick,  
9 I understand that. But if we have by giving them more money, I believe you're  
10 acknowledging that you failed to adequately fund them and therefore could you in fact  
11 be partially responsible for the problems. Are you guys listening?

12  
13 Council President Perez,  
14 Yes, we are. And your time is moving. Keep going, Judy.

15  
16 Judy Koenick,  
17 I have a suggestion. Rather than giving them more money to do this, why not impose a  
18 significant bond on any builder per house above 10 houses that they're building? The  
19 reason being, if you get 10 houses, pretty easy probably to keep an eye on whether  
20 they're too high or too close or so forth, but when you get to a large number of houses,  
21 you can't do it. How about a \$5,000 bond for each house they're building which would  
22 be a significant inducement for the builders to make sure they complied with all the  
23 various setbacks and everything that you had, and you wouldn't have to provide more  
24 taxpayers' money to the Department of Permitting Services to do any of this. Also,  
25 whatever you're doing rather than doing that, you could also require that the actual  
26 owner of the company who's doing the building sign off on each plan and each site plan.  
27 As you know now, the CEOs of the corporations have to sign off on the financial  
28 statements. They're the ones who go to jail if they don't do their financial statements  
29 right. So why not require or have some type of legislation and to introduce rules and  
30 regulations -- introduce that the regular builders and owners of the company are  
31 required to sign off on the plans, and then therefore they would be held reliable (sic) for  
32 any things that happened, and it would eliminate -- it would be an inducement for them  
33 to make sure they comply, and you wouldn't have to come up with additional funding  
34 and taxpayer money for DPS to go out and check site plans or check houses, and  
35 things along that line. That's my basic comment. It would be nice if two of you would  
36 give me the same amount of attention that Mr. Leventhal is doing, rather than talking  
37 between the two of you and doing paperwork.

38  
39 Council President Perez,  
40 Well, Judy, I was looking at the paperwork right here. It says the source of funding is  
41 building permit fees, so what we were discussing...

42  
43 Judy Koenick,



November 8, 2005

1 I understand the building permit fees, but.

2  
3 Council President Perez,  
4 ...okay, so that's what we were discussing.

5  
6 Judy Koenick,  
7 I know it says building permits fees, but...

8  
9 Council President Perez,  
10 The notion that it's coming from our General Fund is simply inaccurate. Okay? And  
11 that's what I was attempting to clarify. And I did clarify it, and that's why we have it in the  
12 building permit fees.

13  
14 Judy Koenick,  
15 Well I was also -- what I want to do is make sure that it doesn't come from them at any  
16 time, whether you come back in a month or two months and say, hey, they need more.  
17 And when you do the budget process, they come in and say they need more people,  
18 where are you going to get the funding to pay more people at that point?

19  
20 Councilmember Leventhal,  
21 From the builders, Judy, the whole DPS budget comes from the builders. It's all based  
22 on fees. The entire Department of Permitting Services budget is a fee-based -- it's a  
23 closed fund. I'm answering your question. You asked a question, I'm answering it, okay?  
24 Permitting Services is paid for, the entire department is paid for by builders through fees  
25 and other applicants -- through fees and permits they're granted. It's a closed fund. It  
26 doesn't come out of taxpayer dollars. That's the whole department.

27  
28 Judy Koenick,  
29 How about their capital improvements budget? If they need -- I'm asking.

30  
31 Multiple speakers,  
32 They don't have a capital improvement --

33  
34 Judy Koenick,  
35 Well, if they need more office space, they need more of these type of things, more  
36 equipment.

37  
38 Councilmember Praisner,  
39 All fee driven.

40  
41 Judy Koenick,



November 8, 2005

1 All fee driven, okay. Well, I still think you need to make sure the builders sign off on  
2 them specifically so that they're the ones who are held liable and not some underling to  
3 made a mistake.

4  
5 Council President Perez,  
6 Thank you for your testimony. We'll move to action, Mr. Silverman.

7  
8 Councilmember Silverman,  
9 This bypassed the Committee so that we could try to move on this, and this was an  
10 outgrowth of the discussion we had with DPS during oversight -- said oversight  
11 discussions that we've had every couple of weeks. DPS needs these resources in order  
12 to do the field investigations, checking height and setbacks. I don't think we were aware  
13 until we had this discussion that, without these resources, DPS was not going to be able  
14 to handle the heightened setback inspections that they're required -- that we expect that  
15 they would be doing. The Department -- I'm not sure -- and maybe I'll ask Mr. Hubbard  
16 what the position of the Executive Branch is at this point.

17  
18 Robert Hubbard,  
19 I'm sorry, Steve, can you repeat the...

20  
21 Councilmember Silverman,  
22 I just wanted to know what the position of the department -- well, the position of the  
23 Executive branch is on this.

24  
25 Robert Hubbard,  
26 On these eight positions?

27  
28 Councilmember Silverman,  
29 Yes.

30  
31 Robert Hubbard,  
32 Certainly we support these eight positions. They're part of the larger package that the  
33 Executive submitted in September to take over all of the enforcement of site plan  
34 inspections. And these eight are related solely to the functions of determining building  
35 height and setbacks, compliance with site plans.

36  
37 Councilmember Silverman,  
38 Okay, so I'll -- officially I'll move approval since there's no...

39  
40 Council President Perez,  
41 Ms. Praisner had...

42  
43 Councilmember Praisner,





November 8, 2005

1 I just want to comment. How much of the funding that we're approving is associated with  
2 legislation that we have not enacted as yet as far as functions are concerned?

3  
4 Robert Hubbard,  
5 I believe the authority to perform these inspections is within the bounds of the current  
6 legislation.

7  
8 Councilmember Praisner,  
9 Right.

10  
11 Robert Hubbard,  
12 The enforcement -- actually, we would not be taking any enforcement actions. We  
13 would be relaying the information to the Planning Board for their decision as to whether  
14 or not violations exist on the site plan.

15  
16 Councilmember Praisner,  
17 Thank you, I appreciate that. I'm going to support the request based on the  
18 conversations we've had in the PHED Committee and in the discussion that we've had  
19 as it relates to inspections and the need for folks to be -- more folks to be out there. I do  
20 think the whole issue of how DPS staff are used and how inspectors are assigned and  
21 what functions of inspection are permit -- are fee driven and where we go with those  
22 issues are still a part of what we, as the Council, will be working through in these next  
23 few months -- and maybe -- hopefully only a few months, but it may drag on a little  
24 longer. And I appreciate the fact that we were able to get this information and be able to  
25 respond. The unfortunate part, it seems to me, while moving on this, we should not do  
26 this in isolation from a standpoint of understanding functions and also trying to respond  
27 in a comprehensive way at Park and Planning as well. And I think part of the reason  
28 why the Chair of the PHED Committee sponsored this is because we had fairly clear  
29 delineated functions for these positions as opposed to some of the conversations we  
30 had about where Park and Planning would want to go with some of their budgetary  
31 needs. But I think we need to move as aggressively from the standpoint of personnel at  
32 Park and Planning, and I also -- without taking a position in the end, I think we're going  
33 to have to decide from a standpoint of functions and personnel. We have to shake out  
34 all of those issues. There are lots of jurisdictions that have a lot more inspectors and  
35 who are permanently assigned and are cross trained such that they can do a variety of  
36 things for a variety of issues and are geographically or otherwise assigned. So I think  
37 those kinds of things are still outstanding. And although I'm voting in support of the site  
38 plan enforcement inspection function, I do so with a specific statement that, in the end,  
39 we might not be allocating personnel for this specific function in the future.

40  
41 Council President Perez,  
42 Okay, I see no other lights. This requires a two-thirds vote, I believe.



November 8, 2005

1 Multiple speakers,  
2 Six votes.

3  
4 Council President Perez,  
5 I'm sorry. All those in favor? It appears unanimous. Okay. Great.

6  
7 Councilmember Silverman,  
8 Go forth and inspect.

9  
10 Multiple speakers,  
11 [ laughter ]

12  
13 Council President Perez,  
14 Okay, I believe -- did that take us through and back to our discussion on the Growth  
15 Policy? Is that where we're at right now?

16  
17 Councilmember Silverman,  
18 Like it or not, we're back to that.

19  
20 Council President Perez,  
21 Okay, let me just take a little process check here. We will be talking about the Growth  
22 Policy, obviously, this afternoon. I've also set aside some time next Monday afternoon to  
23 have a further discussion. As my colleagues are aware, we have to pass -- we have to  
24 resolve this by November 15th. And so there will be time set aside at 4:00 next Monday  
25 to have further discussion, and what I would like to do is take votes at that time, and  
26 then we can take -- then we will have Tuesday morning we can memorialize whatever  
27 votes we would take. Yeah, we'll work through things today. There may be some issues  
28 that we reach consensus on, there -- obviously we'll see how this flows. But I did want to  
29 provide an opportunity next Monday, because I know, if your experience has been like  
30 mine, my focus frankly has been on the Clarksburg report and issues attendant to that.  
31 And I don't feel like I have given this issue the attention it deserves, and I suspect that  
32 some of my colleagues may feel similarly, and so I do want to give us an opportunity to  
33 discuss issues that come up today, but I want to give us another opportunity before  
34 Tuesday to bring any amendments that might be on the table for a vote. So we will be  
35 on Monday again at 4:00 and any other amendments we don't end up discussing today  
36 would obviously be in order then. We have to then prepare a resolution Tuesday  
37 morning, and we do have time set aside to take up the Growth Policy for Tuesday. So  
38 we'll work through things that we can work through. I have -- I'm going to be turning this  
39 over at about 4:00 to Council Vice President. I have another commitment I have to get  
40 to before I get back to tonight's festivities regarding the Ag Reserve and other PIF  
41 policies. Ms. Floreen, did you have a question?

42  
43 Councilmember Floreen,



November 8, 2005

1 [ INAUDIBLE ] I understand the challenge of working through all this, but I'd like to make  
2 a request that, if anybody has new processes, ideas, whatnot, that it be brought out and  
3 put on the table today. I am concerned about well-intentioned suggestions at the last  
4 moment that don't allow either us or the staff or the professionals or the community  
5 members to offer their reaction and comment on that. So I would ask that you make that  
6 a requirement of today's conversation if we're not going to be voting today that  
7 everything be put on the table today, because I otherwise have a difficult time  
8 responding at 4:00 next Monday on final issues that we have to have resolved by the  
9 following day. And staffs would not have time to either vent those issues or respond. I  
10 would ask that we handle today's conversation in that fashion if we could.

11  
12 Council President Perez,

13 I guess the -- I certainly -- I hope that we can at least lay on the table things we're  
14 thinking about. I suspect that, if people have amendments to offer, that they may not  
15 have put words into -- on paper, and that's -- the concern I have is right now I know I  
16 want to get through this. I have studied it. I may have other amendments to offer. I had  
17 one that I put in the weekend packet so that we could consider that today. And I haven't  
18 given this the attention it deserves, quite frankly, and so I'm not sure that I personally  
19 am in a position to say to you by the close of business today that it's speak now or  
20 forever hold my peace.

21  
22 Councilmember Floreen,

23 Obviously, if issues are already on the table, we can chew them over in the meantime, if  
24 we cannot complete that conversation today. But with all due respect to everybody  
25 here...

26  
27 Council President Perez,  
28 Sure.

29  
30 Councilmember Floreen,

31 ...I do think we need to know what it is that we're talking about, and I certainly have  
32 some requests for additional information from staff, and I'm sure other people do. But I  
33 would hope that at least anything that would add a whole 'nother element to our  
34 conversation be at least identified today. Thank you.

35  
36 Council President Perez,  
37 Mr. Silverman?

38  
39 Councilmember Silverman,

40 Thank you, Mr. President. Before we get into this, I'm just trying to understand. Are you  
41 suggesting we're not going to take any votes on any of the Committee -- or are you  
42 talking about there may be other amendments that people want to bring up at 4:00?  
43 Because I...

November 8, 2005



1  
2 Council President Perez,  
3 There may be other amendments that people will bring up next week. I'm certainly  
4 looking forward to rolling up my sleeves now and seeing what we can come to closure  
5 on today.

6  
7 Councilmember Silverman,  
8 Okay.

9  
10 Council President Perez,  
11 But I don't believe that we should preclude people from, upon further reflection, offering  
12 other things, and that's why I set aside some time on Monday. But let's try to work  
13 through what we can work through today.

14  
15 Councilmember Silverman,  
16 Okay, I certainly don't disagree with -- it's your call if we want to get together on  
17 Monday. I just would respectfully say that I'll defer to staff comment on this, but we have  
18 to vote on a resolution next Tuesday, do we not?

19  
20 Glenn Orlin,  
21 That is correct.

22  
23 Councilmember Silverman,  
24 And so the question of whether there are amendments made first of all presents --  
25 made on Monday presents some remarkable challenges since, if we start talking at  
26 4:00, who knows when we stop. And then the second piece really is I thought that what  
27 people were going to put on the table today, albeit a limited amount of time...

28  
29 Council President Perez,  
30 Well, we showed remarkable restraint this morning.

31  
32 Councilmember Silverman,  
33 Well, I know, I think that's -- you know, I wouldn't -- right.

34  
35 Council President Perez,  
36 ...today and next Monday we will be able to get through it.

37  
38 Councilmember Silverman,  
39 Okay.

40  
41 Council President Perez,  
42 Actually, one -- and I don't know when I'm going to do this, but -- and it's more symbolic  
43 than anything, but one of the things I brought up last week that continues to bother me

60



November 8, 2005

1 is the fact that we call this the Annual Growth Policy. And I say this quite seriously. I  
2 intend...

3  
4 Councilmember Silverman,  
5 We don't? It's just an acronym?

6  
7 Glenn Orlin,  
8 No, it's not. The "Annual" is not there anymore, it's called the "Growth Policy."

9  
10 Council President Perez,  
11 Let me back up then.

12  
13 Councilmember Praisner,  
14 It's the GP not AGP.

15  
16 Council President Perez,  
17 It's the "G" that I have the issue with, it's not the "A".

18  
19 Glenn Orlin,  
20 That was an acronym we got rid of, Mr. President. No more AGP.

21  
22 Councilmember Silverman,  
23 Supposed to be MGP, Managing Growth Policy.

24  
25 Council President Perez,  
26 That may be...

27  
28 Councilmember Praisner,  
29 With a question mark.

30  
31 Councilmember Silverman,  
32 Ooh! Oh, my. Get control of the session, will you?

33  
34 Council President Perez,  
35 Okay. Again, it may seem semantic, but I have vivid memories of conversations with  
36 community members about -- you know -- "You really need to revamp your Annual  
37 Growth Policy, 'cause your Growth Policy is broken," as if this document or this process  
38 is our Growth Policy. I think it's simply inaccurate. Our growth -- this is a -- we may be  
39 able to call it a staging policy or something else, but I sure don't think it's a Growth  
40 Policy. And I'm going to be working with Mr. Faden or my colleagues to figure out what  
41 the right name is, because this document has assumed a level of mythical lore that  
42 creates expectations that are unrealistic on every side, and I think we need to call it  
43 what it is. Maybe I don't know quite what it is, but I do know what it isn't, and it's not a

61

**This transcript has been prepared from television closed captioning and is not certified  
for its form or content. Please note that errors and/or omissions may have occurred.**



November 8, 2005

1 Growth Policy. So I'm looking forward to ideas on what the proper name is so that we  
2 can set public expectations appropriately. That's part of the problem.

3  
4 Mike Faden,  
5 Just to make the record clear, you may have some leeway here, but the state law, the  
6 regional district act does use the term small "g" small "p", Growth Policy.

7  
8 Council President Perez,  
9 Okay. Well, anyway, I needed to get that off of my chest. Mr. Silverman, I feel a lot  
10 better.

11  
12 Councilmember Silverman,  
13 You feel better, I know.

14  
15 Council President Perez,  
16 My most recently therapy session, that just blurted it out, and he told me that I should  
17 come to the Council and do it.

18  
19 Councilmember Silverman,  
20 All right. Can I make the following suggestion. Let me make the following suggestion,  
21 Mr. President. Since you have to leave, if I recall, at 3:45...

22  
23 Council President Perez,  
24 Yes. Yes, I do.

25  
26 Councilmember Silverman,  
27 I would suggest that we should take up for the first item of discussion the amendment  
28 that you had circulated, which I can't seem to find a copy of.

29  
30 Councilmember Praisner,  
31 It's on the back of the work session...for today.

32  
33 Councilmember Silverman,  
34 For today.

35  
36 Council President Perez,  
37 Great.

38  
39 Councilmember Praisner,  
40 Just turn over your work session packet.

41  
42 Councilmember Silverman,  
43 Fine, there it is. That's why I couldn't find it.



November 8, 2005

1  
2 Council President Perez,  
3 Let me have my friends at the Planning Board join us, okay? Maybe what I could do is --  
4 if I can...  
5  
6 Councilmember Praisner,  
7 It's stunning in its brevity.  
8  
9 Councilmember Silverman,  
10 That's right, it doesn't say "see over."  
11  
12 Multiple speakers,  
13 "It says it's attached."  
14  
15 Councilmember Praisner,  
16 I'm happy to...  
17  
18 Glenn Orlin,  
19 Before we get started, to make sure everybody has this, three memos, there's the  
20 memo from last week which is a thick one. There's the memo for today which is the one  
21 page, two sides. And there's the addendum that was circulated last night. In addition to  
22 that, if you brought your copy of the final draft Growth Policy from the Planning Board,  
23 that would be the fourth thing.  
24  
25 Councilmember Praisner,  
26 I would urge people to have the Rockville APFO and also the Highway Mobility Report.  
27  
28 Multiple speakers,  
29 Where are we going to get that?  
30  
31 Councilmember Praisner,  
32 They're packets that we've had at some point.  
33  
34 Councilmember Silverman,  
35 She was urging, I don't think it's a requirement.  
36  
37 Councilmember Praisner,  
38 It's not a requirement, I just as urging folks.  
39  
40 Unidentified,  
41 Any additional reading?  
42  
43 Councilmember Silverman,



November 8, 2005

1 We'll have to ask Ms. Floreen. Do we get extra credit?

2  
3 Councilmember Praisner,  
4 They have relevance.

5  
6 Council President Perez,  
7 Why don't I take a moment... Let me take a moment to describe the problem to which  
8 this is the attempted solution, and then let me turn to Dr. Orlin to amplify. I sat down with  
9 him. We also spoke about this amendment in the Transportation and Environment  
10 Committee meeting that we had last Thursday. So this was at least discussed back  
11 then. The problem to which this is the solution is one of the sessions we had in the T&E  
12 Committee where we learned about what was going on in Clarksburg. I recall vividly  
13 meetings I had with members of the community in which the following question was  
14 asked. "Why is it that I see nails being pounded into homes 24/7, people working all  
15 hours of the weekend to make sure the houses are built, but none of the roads are  
16 being built and it's caused chaos in terms of trying to get around in my community?" The  
17 question I asked at the time of people on the other side of the table was has there been  
18 a violation by any developer of any requirements that they were given in the course of  
19 the approvals that were set forth? Answer: No. There were no violations. They were  
20 operating completely within the letter of what their requirements were. And as we know -  
21 - and I guess we could chalk this up to economic theory. Economic theory would create  
22 certain obvious incentives, and the incentive is you build the houses first, and then we  
23 can debate about whether you build the MPDUs toward the end or you build the roads  
24 last. You don't make money building roads. You make money building homes. And I  
25 appreciate that, I respect that, I'm not begrudging that. But when we have a situation  
26 where you have subdivisions going up and you have roads that are waiting 'til the end to  
27 go up, it strikes me that we need to lay our hand upon the invisible hand, because the  
28 invisible hand creates -- the market forces, that is, create the incentive to build houses  
29 first and roads last. And this is an effort in the context of the Growth Policy to amend or  
30 alter to some extent the forces of the invisible hand by requiring some sort of staging to  
31 be in place so that we can ensure that the road infrastructure is not the last thing that  
32 goes up but it does go up in a more timely fashion. I heard from our friends at Park and  
33 Planning last week that, while they appreciate my concerns, they already have the  
34 authority to do this and so this is unnecessary, and I would respectfully submit that, if  
35 the authority already existed, then why did we have the debacle that we had with the  
36 roads in Clarksburg? And so I, with all due respect, did not consider that to be an  
37 adequate response. Because, if you had that authority, then why didn't you exercise it?  
38 And so let me turn to Glenn to talk about what specifically is contained in this  
39 proposal....

40  
41 Unidentified,  
42 Shouldn't we have a second on it first?





November 8, 2005

1 Council President Perez,  
2 ...the spirit of it.

3  
4 Councilmember Silverman,  
5 I'll be happy to provide a second so that it's up for discussion.

6  
7 Council President Perez,  
8 Thank you.

9  
10 Glenn Orlin,  
11 Mr. Perez approached Mike Faden and I to draft this amendment, and we did speak  
12 with other staff about it, not that the other staff would -- would support this, but they did  
13 raise questions and problems with the initial drafts we had, so we did receive some  
14 input from other -- Park and Planning and County staff. The way this would work is,  
15 depending on what type of subdivision you're putting forward, either one that's what we  
16 call primarily "single family residential" or "not primarily single family residential," there  
17 would be a certain threshold. In the case of primarily single family residential, we're  
18 talking about a subdivision which is at least 150 units. If it has 150 units or more, then  
19 you'd be required to put forward a staging plan at the subdivision to Park and Planning.  
20 Typically what happens now is there is a traffic study that is done as part of meeting  
21 Local Area Review requirements and it's done on the entire subdivision and you look at  
22 existing traffic, what's called "background traffic" which is traffic from already approved  
23 development but traffic that is going to show up one of these days as well as traffic from  
24 the site itself and compare it to the future road network, including what's on the ground  
25 today plus what's already programmed for the next four years. And you see if there's a  
26 problem and if there's a problem, the developer often times will have to propose to  
27 widen a road or an intersection or do some kind of mitigation plan to meet the APF  
28 requirement. What this would say is that if you have a development that's 150 single  
29 family units or more -- and of course we're talking about either detached or townhouses  
30 in this case -- that you'd have to look at what does the first 150 units need? And if  
31 there's some smaller subset of improvements that would be required, then that subset  
32 of improvements would have to be on the ground and open to traffic before a building  
33 permit for the 151st unit would be released. If this is an extra large development, it  
34 might be that there are several stages up to 150, up to 300, up to 450, et cetera. Not  
35 necessarily that there would be improvements at each stage, 'cause it might be that the  
36 first improvement might be required at 150, the second one might not be needed until  
37 450. But nonetheless that the-- the analysis that would be done in these increments. For  
38 developments that are not primarily single family residential, the threshold isn't 150, it's  
39 in terms of trips, because you're talking about mixing retail and office and multi-family  
40 and Industrial or maybe they're individual uses but they go across the spectrum. In our  
41 development of this, we select the threshold of 250 peak hour trips, but the same idea  
42 we go forward here. The difference is, on this type of development whether it's multi-  
43 family or Industrial or retail or office, the restriction is not on building permit, but on use

65

**This transcript has been prepared from television closed captioning and is not certified  
for its form or content. Please note that errors and/or omissions may have occurred.**



November 8, 2005

1 and occupancy permit. In other words, once you've reached the threshold and you've  
2 met your improvement -- you're done your improvement, you would get your use and  
3 occupancy permit but you couldn't proceed to the next stage until those first  
4 improvements were done. In terms of where we got the thresholds, we really looked at  
5 the data which the Planning staff provided, and it's in actually the thick packet from last  
6 week, the November 1st packet. I'll just point out where the data is, but I'll tell you the  
7 results. If you look on circles 49 and 50 and then 50 -- I'm sorry. 46 and 47, and 49 and  
8 50. You'll see all the residential subdivisions that have been approved in the last two  
9 years. And there were a total of 236 residential subdivisions. Only two or three of them  
10 actually would meet the threshold so less than 2% of all the subdivisions, if you go by  
11 the last two years data, would actually reach this 150 unit threshold.

12  
13 Councilmember Silverman,  
14 Can I ask a quick question? Where would two or three be?

15  
16 Glenn Orlin,  
17 Well, I can -- well, the ones would be...

18  
19 Councilmember Silverman,  
20 Would have been, I guess, would have been.

21  
22 Glenn Orlin,  
23 Would have been. Or you look at circle 40 -- actually none in FY 2004, if you look on  
24 Circle 49 about a quarter of the way down the page, the Linthicam West Property, 253  
25 single family units. That would be one. About halfway down Casey Property at Mill  
26 Creek, 184 units, that would be another. The Fairland Golf Community would not be. It  
27 falls under a special provision, it's an alternative group procedure, frankly, in the Growth  
28 Policy.

29  
30 Councilmember Praisner,  
31 But it still has to build the road to build the units.

32  
33 Glenn Orlin,  
34 There are other requirements of that, but it would not fall under this.

35  
36 Councilmember Praisner,  
37 But my point is you can't build the houses unless you build the road into the houses. It's  
38 not a complex development.

39  
40 Glenn Orlin,  
41 But if there are improvements on Briggs Chaney Road, whatever main road is off of it,  
42 well, whichever road it is, that has its own conditions. It wouldn't apply to the Fairland



November 8, 2005

1 Golf Community. The other one is near the bottom of the page, the Leesborough  
2 Development, Kensington-Wheaton. There was...

3  
4 Councilmember Silverman,  
5 I don't -- I'm sorry -- I don't understand something. Why would a separate provision in  
6 the Growth Policy which has a requirement not apply to the golf community? In other  
7 words, my recollection is you the golf course got an AGP pass is what it got.

8  
9 Glenn Orlin,  
10 Right.

11  
12 Councilmember Silverman,  
13 So why wouldn't this apply to that?

14  
15 Glenn Orlin,  
16 I'll just read it. This section is one of the things you probably don't have in front of you is  
17 the actual Growth Policy from two years ago. TA-3 Golf Course Community: Applicant  
18 for a planned units development in the Fairland-White Oak Policy Area that includes a  
19 golf course or other major amenity which is developed on a public/private partnership  
20 basis need not take any action under local area transportation review if the applicant  
21 pays to the County a development approval payment established by County law before  
22 the building permit is issued. However, the applicant must include in its application for  
23 preliminary plan approval all information that would have been necessary to meet the  
24 requirements for Local Area Review. The Planning Board may approve the application if  
25 not more than 100 units in addition to MPDUs are built in the first fiscal year and not  
26 more than 100 units in addition to MPDUs and the unbuilt remaining portion of the prior  
27 year's approved units are built in a later fiscal year. So, in other words, a Local Area  
28 Review is not required for this development. What is required is a payment of a  
29 development approval payment. This provision that Mr. Perez is putting forward falls  
30 into the general category of Local Area Review. This is an exception and there are a  
31 couple other exceptions. Another major exception is actually the alternative review  
32 procedure from [ INAUDIBLE ] policy area developments, it wouldn't apply to those  
33 either. And that's why -- well, I haven't gotten to it yet, but on the nonresidential, there's  
34 one or two developments that were large enough that would not be -- would not apply  
35 because of...

36  
37 Council President Perez,  
38 There's a couple questions -- let me turn to Mr. Subin, he has a question on what you  
39 just said.

40  
41 Glenn Orlin,  
42 Okay.



November 8, 2005

1 Councilmember Subin,  
2 Getting down to the bottom of it, the net result is, while we are trying to encourage  
3 affordable housing, we are going to take policies which could slow down that  
4 development for affordable housing and not apply it to housing that is going to be  
5 relatively exclusive.

6  
7 Glenn Orlin,  
8 You're right there's no exclusion for affordable housing here.

9  
10 Councilmember Subin,  
11 But there's an exclusion for golf course housing.

12  
13 Unidentified,  
14 Yep.

15  
16 Unidentified,  
17 Right.

18  
19 Glenn Orlin,  
20 That's been in the Growth Policy for several years.

21  
22 Councilmember Subin,  
23 Well, MPDUs relative to golf course housing are not going to be the same as MPDUs  
24 around a Metro station.

25  
26 Councilmember Praisner,  
27 You're not going to get as many, but you are going..

28  
29 Councilmember Subin,  
30 And there are going to be a lot more -- and they're going to be a lot more expensive.

31  
32 Unidentified,  
33 Yeah.

34  
35 Council President Perez,  
36 Okay...

37  
38 Councilmember Subin,  
39 No.

40  
41 Glenn Orlin,  
42 Just to finish -- oh, I'm sorry.



November 8, 2005

1 Councilmember Subin,

2 In all deference to my good friend, Marilyn Praisner, MPDUs are cheaper relative to the  
3 development that they're in. There is no definition that I know of...

4  
5 Multiple speakers,  
6 [ INAUDIBLE ]

7  
8 Councilmember Silverman,

9 The prices are set by -- the prices are set irrespective of the cost of land by the  
10 Department of Housing and Community Affairs.

11  
12 Councilmember Subin,  
13 Well then...

14  
15 Councilmember Silverman,

16 You take into consideration construction costs but not land costs.

17  
18 Councilmember Subin,

19 You're not supposed to be able to tell the difference between an MPDU and any other  
20 houses. And if you're going to lower that price on the MPDU and have those golf course  
21 housing -- I've never seen golf course housing that is not labeled, to some extent, some  
22 kind of exclusive housing. And they're big houses, and they pay for -- the price of that  
23 land is predicated on this golf course view and not having to deal with anything else that  
24 all the rest of us have to deal with.

25  
26 Council President Perez,

27 I just want to remind my colleague that this is an important debate. We are on an  
28 amendment regarding the staging here.

29  
30 Councilmember Subin,

31 Well, but the issue is that if this -- if your amendment, Mr. President, is passed, it will not  
32 -- if I'm understanding Dr. Orlin correctly, the amendment will not apply to housing  
33 around golf courses.

34  
35 Councilmember Praisner,  
36 No.

37  
38 Councilmember Subin,

39 Well, Glenn used the word "exception." What is an exception?

40  
41 Councilmember Praisner,

42 If I can respond, there is one project that is a partnership that includes Park and  
43 Planning Commission land and a Park and Planning Commission golf course that is



November 8, 2005

1 consistent with the Fairland Master Plan, and the goal of having more diverse housing  
2 within the Fairland area, including some upscale housing which is needed in the  
3 Fairland area, there are also MPDUs. And several years ago, I believe two AGPs  
4 policies ago, the Council -- before or after having done the Metro Station Policy Area  
5 exclusion process incorporated this one development into that requirements for Local  
6 Area Review. And the only comment I made earlier is I think Mr. Perez's concern relates  
7 to what he heard basically coming out of Clarksburg, which is a significant issue about  
8 transportation infrastructure not being built in a timely fashion, and this would trigger the  
9 transportation requirements. Whether that transportation requirement has a relevance to  
10 Fairland or not is an issue for that parcel. It's the number of units that he was focusing  
11 on is the reason why it would not apply because of the number of units and because of  
12 the exclusion from the Local Area Review. But that exclusion as it relates to  
13 consideration of requirements is relatively old.

14  
15 Glenn Orlin,  
16 I have a question which maybe would resolve this.

17  
18 Councilmember Subin,  
19 If I'm understanding a couple of things, first of all, let's not hang all the ills of the world  
20 on Clarksburg. The issue being -- no, I understand that. I'm not -- if this comes out of  
21 Clarksburg [ INAUDIBLE ] then the Clarksburg plan was here when I got here 19 years  
22 ago, and that just isn't true. This is -- this is a problem that has been around for a very  
23 long time. So Clarksburg can't become the poster child for everything wrong in the  
24 planning world. Secondly, the way I'm understanding this now, the exception is only to  
25 this one project.

26  
27 Glenn Orlin,  
28 Right. Well, the way it's written, it was intended for the one project. It could presumably  
29 deal with some other golf development, and in Fairland...

30  
31 Multiple speakers,  
32 [ INAUDIBLE ]

33  
34 Glenn Orlin,  
35 No, no, no! Listen to me.

36  
37 Councilmember Subin,  
38 Glenn, quit while you're ahead.

39  
40 Glenn Orlin,  
41 Time out! Time out!

42  
43 Councilmember Silverman,



November 8, 2005

1 I'm not aware that it applies to anything other than this one project.

2  
3 Glenn Orlin,

4 That's right, and the question I have -- can I ask a question?

5  
6 Councilmember Subin,

7 Assuming everybody put down a laundry list -- no! I'm the Councilmember, Glenn. I'm  
8 the Councilmember.

9  
10 Glenn Orlin,

11 I know. Gotcha. All I was going to ask was...

12  
13 Councilmember Subin,

14 I'm not finished.

15  
16 Glenn Orlin,

17 Sorry.

18  
19 Councilmember Subin,

20 We could take every single exception and start applying it to everything if we want. This  
21 exception is to one development and one development only, and this is past. And  
22 whether we wanted the horse to be out of the barn door or not, it's out the barn door. So  
23 why are we even talking about it?

24  
25 Glenn Orlin,

26 Could I ask a question? This could solve it.

27  
28 Multiple speakers,

29 [ INAUDIBLE ]

30  
31 Glenn Orlin,

32 May I ask the planning staff has this subdivision been totally approved?

33  
34 Unidentified,

35 It has.

36  
37 Glenn Orlin,

38 So the easy answer to this is just to take the section out of the Growth Policy, end of  
39 story.

40  
41 Councilmember Silverman,

42 It's unnecessary to do that, though.



November 8, 2005

1 Glenn Orlin,  
2 Unnecessary to take it out?

3  
4 Councilmember Praisner,  
5 Not at this point.

6  
7 Councilmember Silverman,  
8 It's unnecessary to take it out since it's already been approved. It's unnecessary to deal  
9 with it one way or another.

10  
11 Council President Perez,  
12 There are a host of questions I think on this amendment. And I appreciate those  
13 concerns.

14  
15 Unidentified

16  
17 [ INAUDIBLE ]

18  
19 Council President Perez,  
20 I was going to turn to Mr. Knapp.

21  
22 Councilmember Knapp,  
23 Thank you. I've got a question, I think, for the Planning Board staff. It was about I guess  
24 a year ago June where, with all due respect to my colleague at the other end of the  
25 table, this did come up in Clarksburg a little bit, and I have the same concerns. And that  
26 was the first time I sat down with the community and with developers, having seen what  
27 we did -- some of the things that occurred in Germantown where, because of the  
28 market, because of the demand for housing, there were a number of things that  
29 occurred more quickly than people had anticipated. And so there was clearly a lag  
30 between schools, roads, a variety of things. So the conversation I had had with folks is  
31 where did we expect to be in our development right now, relative to where we are? And  
32 what have we done or what needed to be done to make sure that we had roads,  
33 whatever other infrastructure was supposed to be done in place to accommodate where  
34 we were in the process. If we were further ahead than we expected to be, what did we  
35 do to make corrections for that. And the answer I got back when I asked that question  
36 was: "We've done everything the County has asked us to do" which led me to believe  
37 that there was no connectivity between what was going on on the ground necessarily  
38 and what we were requiring people to do in the way of infrastructure. And so I guess my  
39 question is what -- what occurs right now? What discretion do you have relative to the  
40 comment that you made last week, Rick, and how would what Mr. Perez has proposed  
41 differ from what you can already do?

42  
43 Jeff Zyonz,





November 8, 2005

1 Let me try this. Jeff Zyonz, Countywide Planning. Number 1, what we do now is we  
2 analyze the entirety of the subdivision. We look at what will not work from a Local Area  
3 Review perspective. We require capital improvement programs.

4  
5 Councilmember Knapp,  
6 What's that mean, "What will not work"?

7  
8 Jeff Zyonz,  
9 Does not meet our standards for transportation adequacy.

10  
11 Councilmember Knapp,  
12 Okay, so when you say...

13  
14 Jeff Zyonz,  
15 What will fail by the addition...

16  
17 Councilmember Knapp,  
18 Okay, what amount of the development will cause something to fail, therefore some  
19 change would need to be made in transportation infrastructure.

20  
21 Jeff Zyonz,  
22 Yes, but we don't take it in increments. We take the full development and say, "Will that  
23 full development make something fail within the infrastructure program?"

24  
25 Councilmember Knapp,  
26 And your definition of "full development" is what? So in a place like Clarksburg, would  
27 full development be Town Center or would full development be the four phases.

28  
29 Jeff Zyonz,  
30 Very specific rules here. We take it subdivision by subdivision. If a subdivision has been  
31 approved ahead of it, we count that as adding to the traffic. So it's not that we take all of  
32 Clarksburg all at one time every time. We take the increment we have in front of them,  
33 which is the subdivision set, and say what needs to be required to pass Local Area  
34 Review? And we make that a requirement. Clarksburg is a little bit different because,  
35 again, it was approved under different standards. We actually had a lot of the road  
36 system that was required, or some of it at least, was required because there was an  
37 overall need for more capacity in the area. It was the area level requirement that  
38 required a lot of the major roads. That is, with the old staging routine.

39  
40 Councilmember Knapp,  
41 Well, okay, that makes less sense because, if we took a broader perspective and there  
42 was infrastructure required just generally, if I understand you, that means we needed to



November 8, 2005

1 do it irrespective of the kind of development that was going to occur, so that meant stuff  
2 should have happened sooner, not later.

3  
4 Jeff Zyonz,

5 The question of timing is related to each subdivision itself. And what we did was we  
6 divided the entirety of that system to -- that was going to be build privately, if you will,  
7 and assigned responsibility related to each subdivision. Now, the timing of that  
8 subdivision is a condition of approval with any subdivision, and there are some aspects  
9 of that that do involve staging. But what we've said was that at certain points in this  
10 development when you built "X" number of units, you had to have a road under  
11 construction. Now, the difference there is, once it's under construction, it gets bonded.  
12 Ultimately it will get there. But where the failure is, if you will, that the road is not  
13 completed at the time that you have a certain number of dwelling units. I think the  
14 problem Councilmember Perez was going after was to ensure that it would be  
15 completed at some point in the process. We could have required that, we did not.

16  
17 Councilmember Knapp,

18 Okay, and it was in recognition of the fact that there were -- things had accelerated...

19  
20 Jeff Zyonz,

21 Again, we have a timing in our own minds. We assume that most of the major roads  
22 would take something on the order of 18 months from the time that it started to  
23 construct. Why? Because that's the period of time that it's bonded for. But we find out  
24 that those bonds get extended, that the time period gets extended and it wasn't actually  
25 -- some things aren't or won't be open for construction in a timely manner.

26  
27 Councilmember Knapp,

28 Okay, changing gears to Mr. Subin's point earlier, Clarksburg, to a great degree, is  
29 somewhat of an anomaly in that it's basically our last big greenfield development so I  
30 think everyone has recognized now that we need to pay attention to that infrastructure  
31 and look at making changes as people come back, for amendments and things like that.  
32 How would this apply other places? I mean how would this amendment relative to what  
33 you would already do under Local Area Review -- what kind of tool would that give you  
34 or could you again do the same thing? This would just give you another tool in the  
35 drawer to do it.

36  
37 Jeff Zyonz,

38 It's a tool that has specific requirements at specific steps. It says that every 150 units or  
39 every 250 trips you have a stage which you have something to happen. One of the  
40 problems I see is that's not often the increment of the capital that you're doing. We don't  
41 have incremented road improvements to the 250 trip standard. It's not like, if I build one  
42 lane of traffic, it's either bigger or less than 250. 250 trips. The of steps in infrastructure  
43 that I would need for the number of steps required in staging. That is a 2,000 unit



November 8, 2005

1 subdivision would require eight steps under this. I might have only four capital  
2 improvements, which would mean I would have eight steps that are required that it  
3 would say you have no requirement. It's blank, you resolved it at the step prior. So there  
4 are some unintended consequences here, particularly as it applies to commercial  
5 development. What happens if the commercial development is really in the middle of its  
6 phase at the time that it needs to do another stage? Do you not issue the -- I guess you  
7 would not issue the occupancy permit until that stage was required, but the increments  
8 here are artificial. But the idea is something we can understand in total, which is you  
9 want the development on the ground before it's completed.

10  
11 Councilmember Knapp,

12 So recognizing the potential problem with artificial increments, how would you address  
13 the concept that Mr. Perez has discussed and the issues we've seen in Clarksburg and  
14 make it more applicable to the type of development we're liable to see going forward?

15  
16 Jeff Zyonz,

17 Within -- with each stage of capital improvement -- for each capital improvement  
18 required, you explicitly say when it will be open for construction so that, if I only have  
19 three things are capital, I say at least one will be open at -- you know, you have to figure  
20 out the third, the fifth. But at one stage it will be "X," at stage 2 it will be "Y," but in no  
21 event will the final occupancy permits be granted until all things are open.

22  
23 Councilmember Knapp,

24 What's the triggering mechanism for how you get to that point? How do you determine  
25 you need three capital improvements? Using what metric?

26  
27 Jeff Zyonz,

28 Again, the three capital improvements would be determined by the full build out of the  
29 subdivision. We would then have to -- either you have to do separate studies to do  
30 incremental studies or you create just artificially one-third -- if I have three, I divide it in  
31 thirds. If I have five, I divide it in fifths.

32  
33 Glenn Orlin,

34 The way it would work, if you had a situation like with 2,000 units and there were three  
35 improvements, it wouldn't mean that you'd have to do an improvement after each stage.  
36 The analysis that Jeff's talking about, figure out at which point you need to have each  
37 piece. The first piece might be needed before the 250th. The second piece may not be  
38 needed till the 1,000th. The third one may not be needed until 1,500 or something, and  
39 the point is that the analysis would be broken up in those pieces. So you could approve  
40 a first stage of 250, in the scenario I just gave, and the improvement would be required  
41 to be open to traffic before you release the 251st permit, but then you could release the  
42 251st through the -- the scenario I just gave -- up to 1,000. And as long as you don't  
43 issue the 1,001st until the second piece of infrastructure is open to traffic in that way.

75



November 8, 2005

1 You wouldn't necessarily have to have an improvement done in each phase. It depends  
2 on what the need is. The analysis would be done.

3  
4 Councilmember Knapp,

5 I agree with the concept that Mr. Perez has identified here. What I don't want to get us  
6 locked into is some arbitrary artificial limit. By the same token, to Mr. Denis' points  
7 earlier today, I don't necessarily want to get us in a position to have to describe  
8 gobbledy-gook. I mean I think we've got to do something that is clear to people so they  
9 understand what the criteria are. That I think is the challenge. If this is arbitrary or  
10 artificial, then I think it's going to be important for the course of the schedule that Mr.  
11 Perez outlined earlier to come up with something that's clear but provides that measure  
12 of flexibility that actually is how it would work on the ground. So I guess I would --I don't  
13 know who would draft such a thing or could propose such a thing, but -- you, Jeff, or  
14 Glenn?

15  
16 Derick Berlage,

17 Well, the language in the MPDU law, when it is actually enforced is actually a great  
18 model because it says the MPDU shall be built in proportion with the regular units and  
19 shall not be the last thing built. So you could adapt that to say that infrastructure shall be  
20 build in proportion to the number of units being built and all infrastructure shall be  
21 completed prior to the issuance of the last building permit...

22  
23 Councilmember Knapp,

24 How does that work for roads, though? If you only build two-thirds of a road, it could be  
25 a road to nowhere, so...

26  
27 Jeff Zyonz,

28 It's lumpy, but you have to figure out where you draw that line. Under this, it would be a  
29 specific condition in the preliminary plan.

30  
31 Council President Perez,

32 Okay, Ms. Floreen was the next one with her light on.

33  
34 Councilmember Floreen,

35 Thank you. When we took this up in the T&E Committee -- and I'm sure this was  
36 triggered I think by our first T&E Committee session in September perhaps, when we  
37 were told that when someone starts building a road they basically have 18 months -- is  
38 that correct? In which to complete the work.

39  
40 Jeff Zyonz,

41 Yes.

42  
43 Councilmember Floreen,



November 8, 2005

1 There was a concern about the predictability of that given the variety of things that we  
2 know have happened. I am equally concerned frankly with what's going on with  
3 Clarksburg right now, what we were told the other -- on Thursday is that there are a  
4 number of projects that frankly are just being delayed because the review process and  
5 so forth is taking up a certain amount of time and will affect the ability both for units to  
6 be constructed and corresponding road improvements to be developed. Isn't that right?

7  
8 Jeff Zyonz,  
9 Yes.

10  
11 Councilmember Floreen,  
12 Isn't that what we heard? And one of the issues I think we need to understand is what is  
13 the best staging process to put into play. As I recall, there is a less formal -- there is a  
14 staging requirement typically in a subdivision case, but it doesn't include a completion  
15 date. Isn't that really what this is all about...for the infrastructure part?

16  
17 Rick Hawthorne,  
18 For the record, Rick Hawthorne in Transportation Planning.

19  
20 Councilmember Praisner,  
21 Bring the mic closer to you, please.

22  
23 Rick Hawthorne,  
24 I'm sorry. We have typically not included a completion because we just had found that in  
25 prior instances the infrastructure got completed because the developer -- we did need  
26 them to finish it up before the last development, before the project was occupied. In  
27 Clarksburg, because there were so many moving pieces, it hasn't all fit together, and I  
28 don't know that this amendment would have made it all fit together. There's some  
29 missing pieces in Clarksburg that are missing because the development that's going to  
30 build that piece is not moving ahead. Either the phase of it is not or the whole  
31 development is not. So this is not something that's going to solve all of our problems.  
32 But we certainly could add and we have been adding a requirement for a completion  
33 date in things we've been doing recently.

34  
35 Councilmember Floreen,  
36 One of the issues in Clarksburg -- and I think we're making some progress on it -- is  
37 developing some participation projects where the different parties, frankly including the  
38 County, are going to get involved and perhaps rearrange some of the schedules of the  
39 individual projects. I'm not sure if that would actually be the case but has the potential  
40 for that.

41  
42 Rick Hawthorne,  
43 I'm sorry I didn't understand.



November 8, 2005

Councilmember Floreen,

Well, If there are participation projects, everyone agrees -- is agreeing to have one engineer design the whole road, and then people are going to pay for their obligation to get the whole road constructed.

Rick Hawthorne,  
Proportional share.

Councilmember Floreen,

Would this kind of language affect -- be affected by that sort of thing? I am concerned that we get this stuff constructed. I mean, that's I think probably everyone's number 1 objective here. The question is how do we best ensure that it is indeed constructed?

Jeff Zyonz,

This would ensure that it gets constructed. The problem is that, if it's involved in a public private partnership, the timing of that might delay the developer from going forward.

Councilmember Floreen,

And it wouldn't be the developer's problem.

Jeff Zyonz,

It wouldn't be the developer's opportunity to advance the timing if he's involved with a partnership he would just have to wait for the construction until it was completed.

Glenn Orlin,  
Right.

Councilmember Floreen,

Would that affect the ability of the construction to go forward then? I mean, if the roadway is built.

Jeff Zyonz,

Assuming that they've recorded and it's a public right-of-way and that, the issue would be financing and permitting and contracting. I don't think this would affect it being able to go forward.

Rick Hawthorne,

I wouldn't hurt the roadway. It would hurt the development.

Jeff Zyonz,

The developer.



November 8, 2005

1 Rick Hawthorne,

2 If you were willing to hold the developer up until the public money became available and  
3 the other people kicked in. I mean, this basically says you couldn't build until the whole  
4 public/private project was ready to go.

5  
6 Councilmember Floreen,

7 Well, that's what it was intended to achieve. That's pretty clear. The question I have also  
8 goes to the timing issue. This I think addresses a subdivision plan for timing. Is that the  
9 best time to assign a staging plan for a project?

10  
11 Jeff Zyonz,

12 That seems appropriate to us, because you get the full scale of the development. You  
13 still don't know the precise timing of when the things will be on the ground, because it  
14 will always be relative to the development going forward. See what I mean? When we  
15 approve a preliminary plan and we say, we want you to build this section of road, it  
16 doesn't say that that section of road will be on the ground in 19 -- in 2009. It only says  
17 you're going to be on the ground relative to when you get some -- something going on  
18 the ground. So this is still a relative assurance of when it's going to be constructed, not  
19 an absolute timing of when it's going to be constructed.

20  
21 Councilmember Floreen,

22 Rick, have you had a chance to think about how this would affect how you currently  
23 address staging issues in projects?

24  
25 Rick Hawthorne,

26 It would -- it would completely change the way that the process is right now. I don't --  
27 we've never had this kind of a very artificial staging. We've always been able to say,  
28 "Look, there's look topographically or geographically how staging sorts out." I think it  
29 has a lot of implications that we're just not aware of. I think, until we've seen a bunch of  
30 developments and seen what kind of problems they have, it would be very difficult to  
31 know if this is going to create problems or not.

32  
33 Councilmember Floreen,

34 Would it be possible for you to take a shorter term look at the implications and come  
35 back to us with some specific recommendations? I mean if the numbers should be  
36 different. It certainly makes a lot of sense on the surface knowing -- you know -- it's  
37 always the law of unintended consequences that we end up facing. I'm not sure that this  
38 is really a Metro Policy Area issue. I'm not actually sure what area issue it might be. But  
39 have you had a chance to -- are you saying you don't know either?

40  
41 Rick Hawthorne,

42 I'm saying it's a fairly complex process that -- you know -- kind of is in the abstract right  
43 now, and it's very hard to say exactly what it would look like for the larger developments.

79



November 8, 2005

1 An office building you can see. I think the one office building is great. Gotta have the  
2 infrastructure there before the use and occupancy permit, that's a no-brainer. It's the  
3 breaking the individual residential developments up into pieces of 150 that I think --  
4 where the unintended consequences rule might come in. And we certainly will discuss  
5 this some more among ourselves, and I think really we would need to talk to some of  
6 the folks that build these kinds of projects and say what would it mean to them and --  
7 because we want to work cooperatively with those folks. We want to make things  
8 happen within the context of the public policy.

9  
10 Councilmember Floreen,

11 We talked a little about this in the T&E Committee on Thursday because of the 18  
12 months concern and the Clarksburg environment. One of the issues I think you raised  
13 with us is would that then encourage larger scale developments to simply redefine  
14 themselves to meet the rules? I know there are a lot of 49-lot subdivisions out there that  
15 were created in a way to avoid the MPDU ordinance. I know where they are, actually, it  
16 upsets me. Would this generate something of that nature here? I mean, we'd see 149-  
17 unit communities.

18  
19 Rick Hawthorne,

20 It's been -- it's been scaled back. The numbers are smaller than we saw at T&E  
21 Committee I think in part to try and address that to make it applicable to more. I think it  
22 might have been 250 when we started. And it also requires -- it also says that no stage  
23 can be more than 150 units, so you couldn't have a 50-unit stage and a 250 unit stage.  
24 So you could say, well, that helps that element. You could also say that actually adds  
25 complexity to a larger development. There would be more stages for a larger  
26 development. And certainly, with someplace close if somebody was doing 155 units,  
27 would they probably try and go back to 149? I just -- I don't know the answer to that.  
28 That has happened in the past certainly with other policies.

29  
30 Jeff Zyonz,

31 If you want to avoid the upper limit kind of problem you just say this applies where off-  
32 site improvements are required. So no matter how big, how small, if there's an off-site  
33 improvement required for the development, it gets staged in a timing so that it ensures  
34 that it's completed before...

35  
36 Glenn Orlin,

37 That might be more restrictive. Remember, in looking at the last two years, there's only  
38 2% of all the subdivisions this would apply to. but if you applied it to everything off-site, it  
39 would be a lot more than that.

40  
41 Councilmember Floreen,

42 Would there be a way to write it to say the Planning Board must -- must require an  
43 infrastructure staging plan with every application that requires completion of





November 8, 2005

1 infrastructure -- requires that infrastructure be completed and in place prior to a second  
2 stage with a decision made by you folks to identify how -- what's the right stage  
3 depending upon -- you know -- what's required. I mean, if you have to build a whole  
4 road, you want the whole road done obviously, you know, getting it two blocks or 100  
5 feet when you need 300 isn't helping.

6  
7 Jeff Zyonz,

8 My mind translates that as the general proportionality kind of idea, too, to try for us to  
9 determine stage in the general proportion of the development to the amount of  
10 infrastructure being required.

11  
12 Councilmember Floreen,

13 Because I think the real intention is to get -- is to require staging so that stuff is actually  
14 produced. I'm not sure -- I don't know how important these exact numbers are to the  
15 actual intent. I don't know what Mr. Perez commitment to the...

16  
17 Council President Perez,

18 Spent many hours on those numbers, Ms. Floreen, as usual studied these up and  
19 down. Our [ INAUDIBLE ] said...

20  
21 Councilmember Floreen,

22 I have enjoyed our many midnight conversations on the subject.

23  
24 Multiple speakers,

25 [ laughter ]

26  
27 Councilmember Praisner,

28 You get to bed faster than some of us do.

29  
30 Councilmember Floreen,

31 Would it be that difficult for you to bring back to us some language that it would achieve  
32 this result without -- I mean, I think, for me at least, the only question would be what are  
33 the right numbers and would it be better to tie that to some kind of clearer standard as  
34 opposed to assuming that we know in advance. There might be smaller situations  
35 where you would definitely want it. I don't -- I don't know. I would think you'd want a  
36 waiver provision for circumstances beyond your control. For example, if the County gets  
37 involved and says, well, actually we want you to build this interchange which classically  
38 has occurred, as I recall, historically -- and those are good things. You want the good  
39 projects constructed. So I think you'd want a waiver provision with the appropriate  
40 language maybe by DPWT. I don't know. But -- and also have -- I mean, I'd like to see a  
41 provision that was less tied to certain numbers at this point rather than the basic  
42 objection -- objective that there be some -- if you're going to have staging, staging  
43 means it gets built before you go to the next stage as opposed to this 18-month unclear

81



November 8, 2005

1 timing obligation that allows -- which minimizes frankly the -- appears to minimize the  
2 obligation to get this stuff done.

3  
4 Jeff Zyonz,  
5 We think we understand your intent. We'll try to draft something.

6  
7 Councilmember Floreen,  
8 I don't know if the maker of the motion would support that kind of initiative.

9  
10 Council President Perez,  
11 Yeah, no, you're making -- I'm taking notes. You had the numbers and the waiver, those  
12 are good suggestions. The beauty of having another session on Monday is that we can  
13 come back to this and hopefully resolve some of this.

14  
15 Councilmember Silverman,  
16 I was wondering what the beauty of that was.

17  
18 Council President Perez,  
19 Now it's clear. Exactly, Thank you.

20  
21 Councilmember Floreen,  
22 It's the more beautiful...

23  
24 Council President Perez,  
25 That's right, what a beautiful Council. We really are a beautiful Council. And Mr. Subin,  
26 with your hair cut, we're even a more beautiful Council.

27  
28 Councilmember Floreen,  
29 The vote is out on that one.

30  
31 Council President Perez,  
32 Ms. Praisner was actually next.

33  
34 Councilmember Praisner,  
35 I had written down numbers because I had some concerns about rational on these  
36 numbers. I'd also written down waivers -- options for waivers.

37  
38 Unidentified,  
39 Have you talked?

40  
41 Councilmember Floreen,  
42 Ms. Praisner and I...



November 8, 2005

1 Councilmember Praisner,

2 No, we haven't spoke. But the other concern I had relates to the experience we've had  
3 with road clubs where the -- and also with a big location where different developers  
4 come in with their own piece, where depending upon how you called the subdivision  
5 plan, et cetera, you may have them complete their infrastructure, but it doesn't mean a  
6 twit to the community that's living there in the road club situation or anything else,  
7 because you can't use the road until somebody else finishes their obligation. And  
8 sometimes they don't connect. So I'm not sure how -- I guess I say all that to say that  
9 we want to make sure folks understand that this doesn't solve every problem and  
10 relates to the complexities of some of the developments that you're talking about. It  
11 works best where -- and in some cases transportation infrastructure staging plans are  
12 not just road improvements, and some question I have about thresholds of -- if you have  
13 a stage -- if you have a development of multi-stages and you have some assumptions  
14 that the staging plan for the first phase includes say putting a bus on or doing something  
15 that will increase ridership I can see a issue where you won't reach the thresholds  
16 associated with the outcomes you want until you get to stage three or two. And the  
17 community needs to be clear, and everyone needs to be clear that that stage will not --  
18 first stage will not necessarily give you the outcome until you get the density from the  
19 other two stages. So you get to a situation where you say put a bus on to reduce the  
20 trips, stage one is done, somebody comes in stage two, and folks say no, they shouldn't  
21 go forward because we still have more traffic. Yet you need the three stages to all be  
22 implemented to hopefully get the outcome that you want. So, that's not necessarily a  
23 piece of this language but it is an issue of how you articulate what is being required and  
24 how you're going to measure the outcome. And maybe from a standpoint of the Council  
25 and master plans and staging issues relative to bigger areas, how you measure the  
26 results is -- you may have a place where the development is such that phase one  
27 outcomes have to be achieved, not before you move to say stage three or two, where it  
28 isn't a road but it is some reduction of trips on the -- on the roads that exist now.

29  
30 Jeff Zyonz,

31 There are a couple of things in there. Number one, when we have transportation  
32 demand management kinds of programs, of course, that's sort of an after construction  
33 and occupancy thing for the most part. And we do monitor and we do have objectives  
34 with that, but I think in all cases, I'm not aware of one where we did it within the -- you  
35 know, had that monitoring effect, looked at it at stage one and not the end of the...

36  
37 Councilmember Praisner,

38 But don't you have certain requirements though when -- from a staging perspective  
39 where you're supposed to reduce trips on the road -- have no negative result?

40  
41 Jeff Zyonz,

42 Yes...



November 8, 2005

1 Councilmember Praisner,  
2 And suppose you have a negative result after stage one?

3  
4 Jeff Zyonz,  
5 We -- we do have enforcement provisions to increase our -- the level of effort required  
6 for those transportation demand management programs, where we could go in and run  
7 -- or we could increase the subsidies, or we can do 20 other things to get those  
8 numbers up. That is what happens at...

9  
10 Councilmember Praisner,  
11 I guess my only comment is this is written so much associated with new roads that I  
12 think, given the Council's latitude in, you know, trip mitigation, and given the fact that  
13 we're talking in the Shady Grove Master Plan at full build out of not having a balance in  
14 jobs and housing and having a congestion at one intersection at least. You know, and  
15 they're two different things, but my point being that I'm not sure that we are necessarily  
16 going to have situations where road improvements are the only solution in a  
17 staging...process. And how you measure -- it's all new roads and new infrastructure, but  
18 there's nothing here that defines what staging is, related to anything other than new  
19 road or new infrastructure. And I'm not sure -- it's still completed as it relates to  
20 infrastructure, still assumes it's something physical, I think, and suppose it's a bus? I'm  
21 not sure how you define completed in this -- you just put the bus on the line, you don't  
22 have any result associated with it. I'm not sure. I guess I'm looking for something a little  
23 more rigorous than that.

24  
25 Jeff Zyonz,  
26 I would assume that this legislation was aimed at road construction, correct?

27  
28 Councilmember Praisner,  
29 Right, and my point -- and my point that I'm trying to make is while this is an issue, and  
30 it certainly was an issue in undeveloped areas, and there may be a turn lane or  
31 something that's easy enough to build, there are going to be more and more, I believe,  
32 trip and transportation infrastructure solutions that are not on the ground. And how you  
33 measure that from a staging perspective, so that you say stage one must do this or that,  
34 and whether you have results, or just put the bus on the line. But you have to have so  
35 much ridership or whatever is certainly going to make this more complex, not  
36 necessarily negatively, from my perspective, but from others perspective.

37  
38 Council President Perez,  
39 Mr. Subin.

40  
41 Councilmember Subin,  
42 Thank you. Like I said this is an issue that has been a problem for a very long time and I  
43 think it's been an issue because we never bifurcated public or private roads in a



November 8, 2005

1 development. And trying to predicate the ability to move ahead with the private  
2 development with a public infrastructure just is something that in the long run and short  
3 run is not going to work. Because private development is ready when it's ready and the  
4 public development of an infrastructure is more on a steady state than responding to the  
5 needs of the private sector and the need for housing. So my question for Mr. Perez is  
6 are these -- is this amendment referring to public roads or the roads put in by the  
7 developer.

8  
9 Rick Hawthorne,  
10 The latter.

11  
12 Councilmember Subin,  
13 Because I heard -- see I'm watching Jeff's body language right now and he seems to be  
14 interpreting this differently.

15  
16 Jeff Zyonz,  
17 I assume it's the off-site improvements required for Local Area Review as opposed to  
18 the subdivision road improvements that are built straight up by the...

19  
20 Glenn Orlin,  
21 Yeah, it may be improvements to public roads, but it's done by the developer. But Mr.  
22 Zyonz raised an interesting problem which is what happens when that improvement's  
23 linked with a County or state project?

24  
25 Councilmember Floreen,  
26 That's why you need a waiver.

27  
28 Council President Perez,  
29 Right.

30  
31 Councilmember Subin,  
32 Okay, so that would have to be added in here. Okay, so we're only talking about  
33 privately required infrastructure...

34  
35 Council President Perez,  
36 Right.

37  
38 Councilmember Subin,  
39 ...with Jeff's issue as a caveat.

40  
41 Council President Perez,  
42 Mr. Leventhal.

November 8, 2005



1 Councilmember Leventhal,

2 It sounds like we're making progress and we'll hear back a suggestion. I would ask the  
3 Planning Board to consider one point. I appreciate Mr. Subin's point that we don't want  
4 to make Clarksburg the center of all things that bug us about the planning process.  
5 However, among many things in Clarksburg that we've learned is that we need to have  
6 mechanisms that are clear and understandable to the people that benefit from them.  
7 And so part of what is appealing about Mr. Perez's amendment, which I seconded for  
8 discussion purposes, is that if you hit 150, you hit 150, you're entitled to something. and  
9 my concern is although I do understand Rick's point that you could end up with a lot of  
10 149 unit subdivisions and that's a real concern that I think is valid and a concern that  
11 came up when the T&E Committee considered this. But my point now is that if the  
12 Planning Board is going to come up with a mechanism for getting at Mr. Perez's very  
13 important point that we should not have a lot of houses built with the roads maybe in the  
14 future we don't know when. We should also have a trigger -- if it's going to be subject to  
15 a staging plan that the Planning Board, itself, approves then we need to make sure in  
16 the Growth Policy that the Planning Board publicizes what the staging plan is for the  
17 specific subdivisions, thus the folks who live in the subdivision know for that subdivision,  
18 "Okay, we're about to hit stage two, we know when we hit stage two and now I'm  
19 entitled to be able to drive out of my cul-de-sac because they're going to give me a  
20 road." So that's got to be part of it. There's got to be something that the residents can  
21 look to and say "Ah, this is the point at which we're entitled to those roads." Do you  
22 follow my point?

23  
24 Glenn Orlin,

25 Yes, and I agree with it.

26  
27 Council President Perez,

28 Okay, great. Ms. Floreen.

29  
30 Councilmember Floreen,

31 Well, while we're editing, I think we might, based on Ms. Praisner's comment, I think we  
32 need to be clear on what it is that we're getting at and I read transportation infrastructure  
33 to be asphalt. And if it's not or, you know, whatever goes into the road, if it's not I think  
34 we need to be clear because then it does create a whole 'nother level of ambiguity. I  
35 think Mr. Perez's intention was that infrastructure was stuff that you see on the ground.  
36 Is that correct?

37  
38 Council President Perez,

39 Well, excuse me, I guess I would say that -- no, that was certainly my first thought. I  
40 think it's useful to discuss whether it's my only thought. In so far as...

41  
42 Councilmember Floreen,

43 I was hoping you would say that.



November 8, 2005

1  
2 Council President Perez,

3 I mean I know roads are clearly what is first and foremost on my mind but it may be that  
4 a transportation infrastructure project for a particular subdivision is a bus shuttle or, you  
5 know, a bus stop and some other amenity. Maybe this is Langley Park and it's the, you  
6 know, it's a transit dependent park. Yeah, whatever. There's a number of permutations.  
7 I wouldn't necessarily want to limit it at this time.

8  
9 Councilmember Floreen,

10 Well, I would suggest that we would behoove us to define what we're talking about then.  
11 If it is not something we're used to in the lingo here I think we need to be very clear.

12  
13 Jeff Zyonz,

14 I thought you were talking about concrete improvements. It could be a bus stop, too...

15  
16 Councilmember Floreen,

17 A bus stop.

18  
19 Jeff Zyonz,

20 ...because it's a physical thing.

21  
22 Councilmember Floreen,

23 A bus would be...

24  
25 Jeff Zyonz,

26 But it doesn't include service. It doesn't include subsidizing Metro passes. It doesn't  
27 include bus service, shuttle bus service. It doesn't included those kinds of things as  
28 capital that needs to be done before you...

29  
30 Councilmember Floreen,

31 It wouldn't include things like meeting a particular goal.

32  
33 Jeff Zyonz,

34 I would not think so.

35  
36 Councilmember Floreen,

37 Because that's already required in other approval processes.

38  
39 Jeff Zyonz,

40 In this process, it's required. If they are required to reduce their trips for whatever  
41 reason and that's what they are doing when they are completed you know they are  
42 required to have certain things like bus service if that's what they did to reduce their  
43 trips. But this would not -- that would be an after construction.



November 8, 2005

1  
2 Glenn Orlin,  
3 Mr. Zyonz is correct, that's exactly what we had in mind when we drafted it.

4  
5 Councilmember Floreen,  
6 At least if we are going to adopt something like this let's include the words that say that,  
7 and if there's disagreement about that then we can have that conversation but that was  
8 my understanding of reading it. If it is something different I think it creates a different  
9 debate that -- it may be a very valid one at the right point in time. I'm not the sure the  
10 week before adoption is the right time to get into it. So I would ask that you redefine  
11 transportation infrastructure to include you know, roadways improvements . Tangible,  
12 physical things that -- sidewalks. We have a list of things that we included the last time  
13 around that could be used to satisfy some of the objectives. Things like a bus regional  
14 bus facility, whatnot. Those certainly would qualify. If that's...

15  
16 Glenn Orlin,  
17 The Local Area Review guidelines have actually specifying types of improvements  
18 which are counted for Local Area Review. It's not just rails you ride, it's also certain  
19 regional or sidewalk connectors. Not just sidewalks, per se, but bikeways...

20  
21 Councilmember Floreen,  
22 Well, we added that last time around because we didn't want to be a community defined  
23 by our asphalt per se, but wanted to employ other elements that would achieve the  
24 same result we hoped.

25  
26 Glenn Orlin,  
27 The issue that we didn't get to figure out was Ms. Praisner's issue about what do you do  
28 about services, programs? Because the problem with that is you don't get that mitigation  
29 until the people are there. And so it's hard to make those two things fit.

30  
31 Councilmember Floreen,  
32 Rick...

33  
34 Rick Hawthorne,  
35 I was just thinking a simple sentence for that would be to say "Travel Demand  
36 Management programs will have their own staging." You could just -- We'd just say  
37 'cause it's we do stage them. And we can say it's staging but it would be a separate  
38 staging element. That would get at just what you're talking about, I think.

39  
40 Councilmember Subin,  
41 The Vice President brings up an interesting implementation program. When the MPDU  
42 program first came out and it said "Any development with 50 or more units will have  
43 these." Well, all of a sudden there was this magical number of 49 units developments





November 8, 2005

1 flooding the board. I would hope that whatever the number is the one, a zero, or  
2 whatever that the -- the 150 or whatever that the board sees through this "X minus one"  
3 number.

4  
5 Councilmember Floreen,  
6 That's why you have to be careful about the numbers, because otherwise the board has  
7 no control over something that meets all of the requirements and doesn't reach that  
8 number.

9  
10 Mike Faden,  
11 There is a last sentence in the amendment, which is actually taken from the MPDU law  
12 to avoid splitting of subdivisions to get underneath the number.

13  
14 Councilmember Floreen,  
15 Yeah, but that...

16  
17 Councilmember Praisner,  
18 I don't think that applies here.

19  
20 Councilmember Floreen,  
21 Not necessarily.

22  
23 Councilmember Subin,  
24 All development can be 149.

25  
26 Multiple speakers,  
27 [ INAUDIBLE ]

28  
29 Mike Faden,  
30 The higher the number the less likely somebody will shave it down just to avoid this.

31  
32 Council President Perez,  
33 Ms. Praisner

34  
35 Councilmember Praisner,  
36 I'm glad we're having the conversation about what transportation infrastructure is  
37 because we use transportation infrastructure different places different ways for credits  
38 and for requirements et cetera. My only point was in some of the -- if you have a large  
39 development and you have some staging requirements if you get part way through you  
40 should start to see some relief that is associated with the fact that you were going to  
41 mitigate your trips. Maybe you won't see all of them mitigated to the end but at least you  
42 should see some. Otherwise you know, the question is whether then mitigation of trips  
43 by non-asphalt means is the legitimate mitigation at all. Period. And this Council has in

89



November 8, 2005

1 the past said it didn't want, as Ms. Floreen said, asphalt solutions, nor do they exist  
2 we've been told. So I think we need to -- if we do this and say it's only going to look at  
3 roads, infrastructure, physical, then I think we need to develop a work plan item for the  
4 Planning Board to look at the issue of the other mitigations and staging from a  
5 standpoint of it's possible use in the future and relationship to this requirement as we  
6 evaluate the effectiveness of this requirement as well.

7  
8 Council President Perez,

9 Okay, so what we're going to do is we'll come back to this on Monday. There were a  
10 number of very good suggestions as we addressed among other things, the doctrine of  
11 unintended consequences, but the number -- the threshold number, the waiver,  
12 clarifying, private road, definition of transportation infrastructure. Those were some of  
13 the items that I heard. And I know Glenn was taking copious notes and I appreciate the  
14 discussion. I also want to give my friends in the outside world who only heard about it  
15 relatively recently an adequate opportunity to add anything else to the list so we'll  
16 continue our outreach between now and Monday and I think this will help improve the  
17 process. So let's turn back to I think we were on to Local Area Review or whatever...

18  
19 Councilmember Silverman,

20 What I would suggest is this Mr. President is that we go to the November 1st packet .  
21 And we turn to Local Area Transportation Review issues which starts on page 8 so that  
22 we can fold in this discussion about a potential cap on -- the 200 CLV cap on potential  
23 ARP development approvals. The Committee unanimously agreed, as we're on page 8,  
24 to a technical change which has to do with the 4th bullet being clarified that the doubled  
25 impact tax is the transportation impact tax, not the school impact tax. And we got into a  
26 discussion about the alternative review procedure and Metro Station Policy Areas,  
27 Glenn had recommended two options for modifications . One is requiring reduction of at  
28 least 60% of the number of trips attributable to the subdivision, up from 50%. I don't  
29 remember what Ms. Praisner's position was on this piece, the 50 versus 60, we haven't  
30 gotten to the 200 yet, because it just reflects we had an aggregate vote, but...

31  
32 Unidentified,  
33 [ INAUDIBLE ]

34  
35 Glenn Orlin,

36 My recollection, top of page ten. My recommendation is that Ms. Praisner supported the  
37 60% but may want to propose a different cap than 200.

38  
39 Councilmember Silverman,

40 Okay. Okay. So I just wanted to clarify. We had a 2-1 vote on the issue of going from  
41 50% to 60%. The Committee majority position was that we had as a practical matter no  
42 experience with the 50% trip mitigation in Metro Station Policy Areas since [Elcor] and  
43 the conference center, the only two that have gone through the process and the Elcor

90



November 8, 2005

1 project hasn't started in terms of it actually doing something and the general concern  
2 about whether, since 50% was a very ambitious goal, whether 60% was achievable. Let  
3 me talk about the 200 CLV issue first and then we can go to -- suggest we go into  
4 questions. The Planning Board -- this really has to do with this -- this kind of goes back  
5 to the previous Council. So -- when [Elcor] came in trying to look for if I recall correctly  
6 and I total exemption to the Annual Growth Policy requirements, we fashioned a  
7 compromise that basically said that they will have to meet a trip mitigation requirement  
8 of 50%. The trips attributable to the subdivision understanding that what we were  
9 effectively saying to the public was we believe in smart growth. We believe certain  
10 projects should be allowed to move forward but we also believe we have some  
11 responsibility. We the government has some responsibility -- you can close that Karl  
12 you know unless you brought your SPF-35. That we -- that the government has some  
13 obligation to provide traffic mitigation not just the developer who comes through the  
14 door last. The Council -- the last Council supported it, this Council continued to support  
15 it. In conjunction with a request that was made at the time two years ago asking the  
16 Planning Board to take a look at this issue again the Planning Board sent over a memo  
17 on January 29th, 2004, which I do not think is in our packets. Is that correct, Glenn?

18  
19 Glenn Orlin,  
20 I believe it's on Circle 100.

21  
22 Councilmember Silverman,  
23 Is it? Ooh, okay. There it is. Yes. Okay. Right. Well, then I'll turn -- people can take a  
24 look at Circle 100. The position of the Planning Board was to not recommend limiting  
25 the use of the alternative review procedure in Metro Station Policy Areas. And the letter  
26 speaks for itself. I would just highlight that what's in here in the letter we received from  
27 Chairman Berlage the board believes instead the County should support Metro Area  
28 development approvals with transportation infrastructure, transit service, and traffic  
29 demand management programs. When development proposals in Metro Station Policy  
30 Areas will result in unacceptable levels of congestion the Planning Board believes the  
31 appropriate public response is to provide the transportation improvements and  
32 programs to solve the congestion issue rather than halting development approvals. So  
33 that's basically what the Committee's recommendations are. I had a couple of questions  
34 about the -- and then we can -- we have an addendum which Glenn has prepared which  
35 talks about what the affect would be of a 200 CLV cap on potential ARP development  
36 approvals. So Glenn can you take us through that?

37  
38 Glenn Orlin,  
39 Sure. This is in the addendum. And what we did yesterday was look at the two recent  
40 subdivision approvals, Local Area Review studies, which looks at, again, not just  
41 existing traffic like the Highway Mobility Study shows, but also the additional traffic from  
42 the development that is already in the pipelines plus development from the site itself,  
43 and also takes into account any improvements that our program take place. And the

91



November 8, 2005

1 result of those two studies, the intersections that were looked at, there's that table at the  
2 top of page two of the addendum. You see in the first column the current standard that  
3 exists under the Growth Policy. Under my proposal essentially what would happen is  
4 the standard for ARP developments would be 200 higher than whatever the current  
5 standard is. Under the current ARP procedures there is no cap at all, there's really no  
6 standard. So for Viers Mill Road/Twinbrook Parkway the, essentially you could go up to  
7 1,700 Critical Lane Volume and you'd still be okay. That particular intersection however  
8 based on the recent traffic study in that area shows a forecast of Critical Lane Volume  
9 of 1,905, so it exceeds the standard. So that would mean is that any other development  
10 -- in most cases any other development that's in that vicinity of Viers Mill  
11 Road/Twinbrook Parkway that would include that intersection in its traffic study, the  
12 ARP wouldn't work on its own. The developer would have to find some way of mitigating  
13 the traffic increase from his development to get it down to 1,905. But in all other cases,  
14 as you can see if you compare the second and third column of numbers, you see there's  
15 actually still quite a bit of a gap between what the effective proposed ARP standard  
16 would be and what the forecast Critical Lane Volume is. The reason why I put this  
17 together, there was a concern about well, would developments that are coming forward  
18 in Metro Station Policy Areas be not approvable in the next few years or next couple of  
19 years based on this new standard. This only looks at Twinbrook and White Flint, I grant  
20 that, but I certainly would say with the exception of that one intersection there is plenty  
21 of space between the two. The other thing I'd add while I have the floor is going back to  
22 the same letter that Mr. Silverman pointed out, the Planning Board did recommend not  
23 having a cap but if there were a cap it should be 200...

24  
25 Councilmember Silverman,  
26 Great minds think alike. Either that or you remembered.

27  
28 Glenn Orlin,  
29 No, you know, it was just serendipity. I totally forgot about the letter and it must have  
30 stuck in my mind somewhere.

31  
32 Councilmember Silverman,  
33 Let me ask Planning staff since you denied recommend this in the first place. What  
34 other intersections in other Metro Station Policy Areas or near Metro Station Policy  
35 Areas might be at risk due to being near the standard that is currently in place? In other  
36 words, this would apply to all Metro Station Policy Areas. So I appreciate the fact that  
37 Glenn has taken a look at Twinbrook and White Flint, but what is the situation in places  
38 like Bethesda or Silver Spring? In addition one of the things that you had said -- the  
39 Planning Board had said in its letter that I quoted from is -- even referring to the 200  
40 critical lane movements is "the negative aspect of this approach is that desired  
41 development could be held back by congestion at a single intersection." So could you  
42 talk about that point and how that really plays out. Because I guess, Glenn, what you're



November 8, 2005

1 saying is that if there is a proposal that is in the vicinity of Viers Mill Road/Twinbrook  
2 they would have to correct -- they'd have to do some improvement there.

3  
4 Glenn Orlin,  
5 They'd have to get it back down to 1,905.

6  
7 Councilmember Silverman,  
8 Right. So Rick do you want to talk about this?

9  
10 Rick Hawthorne,  
11 We -- because this deals with intersections that would be not only with the current  
12 development -- the current traffic but it would include new development, you have to  
13 sort of think about, "Okay, what would be a couple of developments -- places where  
14 development could come in?" And as we looked at it and you could certainly see this  
15 applying in Wheaton. Perhaps at Georgia and -- Plyers -- Plyers Mill...

16  
17 Unidentified,  
18 [ INAUDIBLE ] Plyers Mill? Plyers Mill.

19  
20 Rick Hawthorne,  
21 I'm sorry...

22  
23 Unidentified,  
24 Georgia and Plyers Mill.

25  
26 Rick Hawthorne,  
27 Right. About two blocks down. I think -- I'm sorry, South Silver Spring, Glenmont,  
28 absolutely Georgia and Randolph would absolutely, probably, be a problem here. And I  
29 guess our sense is that you've got such a good strong public policy about requiring  
30 developers using the alternative review procedure to have world-class trip reduction,  
31 50% trip reduction is just huge, and to pay extra fees to the County. That then to put this  
32 cap on here where we really don't know where the might kick in, but it would probably  
33 be in a place where we hadn't anticipated it. And it might well be -- like Georgia and -- I  
34 mean in Viers Mill and Twinbrook. I mean do we want to hold up Twinbrook  
35 development right on top of the Metro Station for that intersection? I mean we're already  
36 doing a number of things. And 1,905 is -- sort of includes a lot of future development  
37 which may or may not occur and some other intersection improvements that are already  
38 programmed there. We're already working with the process and we're always worried  
39 about a hard cap that has no ability for us to do anything about it if it turns out it's a  
40 situation you don't want to build a bunch more infrastructure there.

41  
42 Unidentified,  
43 If I can -- I'm sorry, go ahead, Jeff.



November 8, 2005

1  
2 Jeff Zyonz,

3 It seems to me the essential policy issue here is whether you want to be more restrictive  
4 in the areas that you want development. And that is really the fundamentals behind it.

5  
6 Councilmember Silverman,

7 Glenn, to go to Rick's comment or whatever about the Glenmont area, so you have a  
8 project that -- let's say a project in the Glenmont area -- and the numbers basically show  
9 that Georgia and Randolph is 200 above the target. So what does the developer of that  
10 project then do?

11  
12 Glenn Orlin,

13 Can we move the discussion, say, to Wheaton, because in Glenmont the master plan  
14 requires that no development of any size really can happen in the Metro Station Policy  
15 Area until the interchange is built -- or 'til the interchange is programmed.

16  
17 Councilmember Silverman,

18 So that's blocked by the master plan anyway?

19  
20 Glenn Orlin,

21 Yeah, the master plan blocks it anyway.

22  
23 Councilmember Silverman,

24 Okay, pick Wheaton.

25  
26 Glenn Orlin,

27 Let's say Wheaton. Georgia Avenue and Plyers Mill's a good example, or Georgia  
28 Avenue and University. What it would mean is that instead of by going 50% mitigation  
29 and paying -- also paying the double impact tax. I didn't mention that, but it's also a  
30 requirement. They could move forward to whatever level and cause whatever  
31 congestion might happen at those intersections. It would essentially say for doing the  
32 doubled impact tax and 50% mitigation you would get a bonus of 200 CLV over what  
33 you would otherwise have in your study. And anything beyond that you have to mitigate.

34  
35 Councilmember Silverman,

36 Well, I know. What I'm asking is so what is the mitigation? I mean in other words...

37  
38 Glenn Orlin,

39 It could be -- well, it could be -- well.

40  
41 Councilmember Silverman,

42 What is the mitigation that the developer will have to do when you're talking about a  
43 project that the quote "improvement" theoretically is a state road project?



November 8, 2005

1  
2 Glenn Orlin,

3 If it's a -- well, let's go back to my proposal and split it. Let's say you don't go to 60%  
4 and keep it at 50%. If they mitigate beyond 50% that's one way they could do it, if they  
5 can reduce traffic more than that...

6  
7 Councilmember Silverman,

8 But they would have to mitigate the trips at that intersection though?  
9

10 Glenn Orlin,

11 Right, but by mitigating some of -- if they go beyond 50% mitigation they would be  
12 mitigating some more traffic through that intersection, or they could do an improvement  
13 at that intersection. Whether it's a turn lane or another through lane. I don't have the  
14 answer, every story is different.  
15

16 Rick Hawthorne,

17 One other issue is that the intersections near Metro Station Policy Areas are more  
18 difficult to fix. And so part of the reason for this is that you would want non-intersection  
19 improvement changes. And if you have a system that's dependent on intersection  
20 improvements it's going to be difficult. We have a queueing process within Metro Station  
21 areas one of the sort of second safeguards is that within the areas the Metro Station  
22 areas anything over 1,800 there has to be a test of the queueing to be sure that it  
23 doesn't queue back to the next intersection so that we very much the whole idea of  
24 gridlock literally is if the queue back goes back to the other intersections and we test for  
25 that and it's been a useful kind of second check and you've now applied that to every  
26 Metro Station Area over 1,800. So we already do that.  
27

28 Glenn Orlin,

29 But you don't do it for the ARP developments.  
30

31 Rick Hawthorne,

32 I'm sorry?  
33

34 Glenn Orlin,

35 You don't do it for the ARP developments. I mean the developments that go through the  
36 alternative route procedure...  
37

38 Rick Hawthorne,

39 They have to do a traffic study. We certainly could do that with no problem.  
40

41 Glenn Orlin,

42 Right, I mean that's another alternative is that if you didn't want to go with a specific 200  
43 CLV cap you could say that the intersections can't get worse than a 90% queueing from

95



November 8, 2005

1 the intersections. But, again, I want to stress under the ARP situation now there is no  
2 cap -- or there's not queueing requirement, there's no...

3  
4 Unidentified,  
5 [ INAUDIBLE ]

6  
7 Councilmember Silverman,  
8 Okay.

9  
10 Council President Perez,  
11 Ms. Praisner.

12  
13 Councilmember Praisner,  
14 Well, I indicated within the Committee that I wasn't sure what the number or threshold  
15 that I was interested in, but I think the point -- and the problem I have with the chart on  
16 page two of the addendum, it makes it look as if the standard is being made worse by  
17 increasing the number to 1,700 from say a 1,500. What it is actually doing is it should be  
18 up applied against a zero standard at this point, using the alternative review process.

19  
20 Glenn Orlin,  
21 Well, yeah. I mean there is a column for the current...

22  
23 Councilmember Praisner,  
24 Right, that's the current standard but if you're using the alternative review process it's a  
25 zero, isn't it.

26  
27 Glenn Orlin,  
28 Right, if there was a column saying "Current ARP Standard" it would say infinity.

29  
30 Unidentified,  
31 No, no limit.

32  
33 Councilmember Praisner,  
34 Yeah, no limit, it would say "no limit." So this looks like you support Glenn's proposal,  
35 you're really increasing the -- the threshold level of traffic, when actually what you're  
36 doing is imposing some kind of a limitation where no limitation exists when you apply  
37 the alternative review process at this point. Wouldn't that be a better way of showing the  
38 difference?

39  
40 Glenn Orlin,  
41 You could show it that way and that would be correct. The only reason I put the chart  
42 together was I wanted to show you where...





November 8, 2005

1 Councilmember Praisner,  
2 To see what the 200 applies to, but when you look at this, it says current standard then  
3 the proposed standard increases. But that's not really the application.

4  
5 Glenn Orlin,  
6 That's right.

7  
8 Councilmember Praisner,  
9 Since we're not going to take any action today given the discussion about alternatives  
10 beyond -- different from the 200, but looking at the conversation we just had, I'd like  
11 planning staff to tell us how that -- what that would look like as a requirement. The  
12 queueing.

13  
14 Glenn Orlin,  
15 Oh, the queueing. So the 90% queueing.

16  
17 Jeff Zyonz,  
18 We couldn't tell you what that meant, because those are very complicated, but that is  
19 something we...

20  
21 Councilmember Praisner,  
22 But you can show the language that...

23  
24 Jeff Zyonz,  
25 The language, okay.

26  
27 Councilmember Praisner,  
28 I think the point being that at some point a fatted calf starts to get too fat and can't  
29 move, and that's basically part of the concern that I think Mr. Orlin was trying to address  
30 that even with these -- there's no -- the parameters are unending at some point in this.  
31 And yes, we haven't had very many -- any real implementation processes, but short of  
32 doing this now we really need to look at this issue at some point.

33  
34 Council President Perez,  
35 Mr. Andrews.

36  
37 Councilmember Andrews,  
38 Thank you. I'm interested to hear and see what your analysis is on what the language  
39 would be on applying a queueing test for Alternative Review Procedures and so on,  
40 because a continuation of the current policy would allow potentially unlimited congestion  
41 in Metro Station Policy Areas. And at some point that would happen. So the question is  
42 at what point do we head that off? Because there is no upper limit in terms of how bad it  
43 can get even if employers are mitigating 50% of all of their new trips. That's the point.



November 8, 2005

1 And I think it's a little confusing in how this was presented but it is important to note that  
2 there is no upper limit for these intersections under the current ARP. So I think this is an  
3 important issue to come back to and decide on Monday.

4  
5 Glenn Orlin,

6 I can just -- if you just bear with me for a second, I can read the language out of the  
7 Local Area Guidelines that Rick was referring to. It reads as follows: If the CLV is over  
8 1,800 a queueing analysis shall be performed. Existing queues shall be measured by  
9 the applicant and total traffic -- that is existing, background, and site, which is what  
10 we've been talking about, and planned roadway and circulation changes shall be taken  
11 into account. The average queue length in the weekday peak hours should not extend  
12 to more than 80% of the distance to an adjacent signalized intersection provided the  
13 adjacent signalized intersections are greater than 300 feet apart. The 80% standard  
14 provides a margin of safety for peaking. If the adjacent signalized intersections are  
15 closer together than 300 feet the average queue length in the weekday peak hours  
16 should not extend to more than 90% of the distance to the adjacent signalized  
17 intersection. The signal timing assumed for this analysis must be consistent with the  
18 crossing time required for pedestrians in paragraph B-2b of this section. So that's -- I  
19 don't think we need quite as detailed as that, but that's how it works.

20  
21 Councilmember Floreen,  
22 Those are the current requirements?

23  
24 Glenn Orlin,  
25 Yeah, that's how it works today.

26  
27 Councilmember Floreen,  
28 That's how it is?

29  
30 Glenn Orlin,  
31 So you can have intersections which are beyond 1,800 in a Metro Station Policy Area if  
32 it meets these requirements.

33  
34 Council President Perez,  
35 No other lights...

36  
37 Councilmember Silverman,  
38 Okay, I guess just a last comment, I mean when we come back to this on Monday, the  
39 policy issue I think that we have to decide here is basically who's responsible for the  
40 other 50%? That's what we're talking about. And while on paper, you know, you could  
41 certainly argue there is an unlimited amount of -- under the current policy that we have  
42 you could have an unlimited amount of traffic in Metro Station Policy Areas. The  
43 question I would really pose is well, whose fault is that? We have the ability to mitigate

November 8, 2005



1 other trips. The question is do we want to basically say that 50% is not enough for  
2 development that we want in our smart growth areas, we want to set up a system that  
3 says "Well, if it's going to be 250 CLVs above the standard then we want to make sure  
4 the developer picks up that cost or do we pick up that cost? And I think that that is a  
5 policy issue that we have to wrestle with. And I think we ought to take some  
6 responsibility for mitigating traffic around Metro Station Policy Areas. That to me is what  
7 we should be deciding on Monday because to suggest that it's unlimited gets past the  
8 point that if it's unlimited it's because we have allowed it to be unlimited. All right, let's go  
9 into the other pieces of what we discussed in Committee. We're on page 10, should  
10 LATR be administered at other than the morning and evening weekday peak hour?  
11 Committee recommended unanimously and Council staff to continue the practice of  
12 examining morning and evening weekday peak hours for the later analysis. I'm going to  
13 keep going until people have questions or comments about that, about -- as we go  
14 through each piece.

15  
16 Glenn Orlin,

17 Can we -- it would be helpful, since we don't have that much time next Monday, if  
18 there's certain of these issues that the Council is okay with let me know, so we don't  
19 have to come back to that on Monday.

20  
21 Councilmember Praisner,

22 Well, I think we've got some issues.

23  
24 Glenn Orlin,

25 So far, yeah, but this one for example.

26  
27 Councilmember Silverman,

28 All right, okay. How many... Next one's "C" How many intersections should be studied  
29 and later the Committee recommendation was 2-0 with Ms. Praisner abstaining. We  
30 wanted to add language emphasizing that the Planning Board may examine more than  
31 the minimum number of intersections in the table, which they currently have the  
32 authority to do anyway, but we wanted some language in the resolution, and that's what  
33 Committee's recommendation was.

34  
35 Council President Perez,

36 Ms. Praisner.

37  
38 Councilmember Praisner,

39 Yeah, My -- I didn't have any problem with "may," the problem was what should be the  
40 minimum number of intersections depending upon the trips generated? And I asked  
41 staff to give me some information because I thought to some extent I would perhaps  
42 have recommendations for changing the numbers. And I'm not prepared at this point but  
43 my problem is I did get the list of at least the developments in a section of the County.

99



November 8, 2005

1 Also asked for -- picked out a few of those and asked for how many intersections were  
2 studied, but I forgot to ask for number of trips generated associated with each of those.  
3 So I don't know what threshold was associated with it. I don't know why I didn't think of  
4 that. So if you all could tell me that, for the same ones that you gave me the nice  
5 colored map about, I would appreciate that. So I can tell you if it showed for me a  
6 problem. Because from the chart that I saw it seemed to me that -- and maybe it's  
7 associated with the trips generated -- that some of those intersections there should  
8 have been more studied or I would have intuitively wanted more studied. But it may be  
9 there were not the minimum peaks generated, and therefore I might have an issue with  
10 trying to change the numbers of trips, not necessarily the exclusively the number of  
11 intersections studied, but -- So, put that on the list of something that I may bring up on  
12 Monday but it did raise a question in my conversation with Glenn. Because when Glenn  
13 and I were talking about the map, Glenn said "Well, it's only signalized intersections that  
14 you're studying, so that's why there are only these numbers." And if it doesn't have the  
15 traffic beyond the signalized intersection then you would not be looking at it and that --  
16 when I looked at the map there were some intersections that weren't signalized -- in my  
17 recollection -- that were studied. So, can you tell me whether it's only signaled or not?

18  
19 Rick Hawthorne,

20 It is only signaled. That's how we count. So we would, if there was...

21  
22 Councilmember Praisner,

23 So you do no trip analysis of traffic -- no traffic analysis unless DPWT has done a  
24 justification that the intersection both ways is such that it justifies the traffic signal.

25  
26 Rick Hawthorne,

27 Actually, -- I mean we would normally do the places where there is physically a traffic  
28 signal. Very seldom is there a new traffic signal involved in the analysis, but is that -- I'm  
29 sorry, maybe I'm misunderstanding the question.

30  
31 Councilmember Praisner,

32 No, my point is you're not asking for any traffic study on anything other than a signaled  
33 intersection.

34  
35 Rick Hawthorne,

36 That's correct.

37  
38 Councilmember Praisner,

39 And it looked like to me some of the intersections were not signaled, I'll go back and  
40 look at it, but It does raise a question about DPWT's policies driving which intersections  
41 get looked at, even though it might not have reached the threshold from a traffic  
42 perspective of having a signalized intersection, but it being a problem from a traffic



November 8, 2005

1 perspective already. And you can do trip counts with a wire across the intersection, you  
2 don't need to look at signalization.

3  
4 Derick Berlage,  
5 I'm just trying to think if I can think of any non-signalized intersections in the County that  
6 have congestion that would rise to...

7  
8 Councilmember Praisner,  
9 Sure do --- I can tell you. Where folks can't get out of roads because of -- folks can't get  
10 out of their neighborhood and the traffic queues up at intersection because the project  
11 along the other road is so great that they can't get out in the morning. That's traffic  
12 congestion in my view.

13  
14 Councilmember Andrews,  
15 A very good example of that would be Nolan Drive and Travilah Road would be a good  
16 example.

17  
18 Councilmember Praisner,  
19 Maybe every district Councilmember can list you where they have complaints and the  
20 queue for the Department Public Works and Transportation analysis of whether a signal  
21 needs to be there is after the fact. Talk about infrastructure that doesn't follow -- it's so  
22 late in the process and so far behind that and -- that you don't get a signal installed but  
23 there is congestion.

24  
25 Glenn Orlin,  
26 The DPWT and the State Highway Administration they follow the national standards for  
27 what warrants or requires...

28  
29 Councilmember Praisner,  
30 Glenn, I'm not talking about the national standards. I'm talking about the time and delay  
31 before they even do a study and install a traffic signal as one issue. I have another  
32 issue with congestion that is such that in the morning folks can't get in or out, but it  
33 doesn't justify a traffic signal maybe from a standard's daily bases and there are also  
34 places where right now it looks like traffic signals are going to be installed because of  
35 safety reasons not necessarily because of intersection congestion reasons. So from a  
36 standpoint of what you study if you on the study where there is a traffic signal and a  
37 traffic signal is there because of safety not because of congestion you're not necessarily  
38 studying the intersections where the congestion is because it doesn't have a signal. And  
39 the Department of Public Works and Transportation is so far behind in their review and  
40 analysis -- it's a problem. So I'll go back if you can give me those trips generated issues.

41  
42 Councilmember Silverman,



November 8, 2005

1 All right, the next item is item "D," the CLV method for measuring the capacity of an  
2 intersection works only if the traffic flow through the intersection is not impeded by  
3 queues from the next intersection. PHED Committee and Council staff recommended 3-  
4 0 to include text in the Growth Policy Resolution indicating that queueing from adjacent  
5 intersections may be a factor in determining whether an intersection will meet the later  
6 standard. And the Planning Board should include more specific guidance in its later  
7 guidelines as to how this queueing is to be considered in later traffic studies.

8  
9 Unidentified,

10 That would be the Kensington [ indiscernible ].

11  
12 Councilmember Silverman,

13 Yes, right. Testing for link capacity which is "E." Council staff and the PHED Committee  
14 recommended that the Planning Board should develop link capacity standards for  
15 inclusion in the later guidelines by next Spring. Okay, we're on to "F," tightening the later  
16 standards. There are a couple of issues here. The first one is to tighten -- Council staff  
17 recommendation, first one is to tighten the later standards and in suburban and rural  
18 Policy Areas. There is a chart down at the bottom of page 13: The majority Committee --  
19 meaning Ms. Floreen and I -- recommended revising the standards as shown in the  
20 table below. Ms. Praisner was asking for more information.

21  
22 Councilmember Praisner,  
23 Can I?

24  
25 Councilmember Silverman,  
26 You may.

27  
28 Councilmember Praisner,  
29 I was okay with the number but some of the areas do not seem consistent to me. I know  
30 they are associated with the old TPR study, et cetera, but there is, in my view, --  
31 Germantown Town Center, having a threshold level of 1,425 when Olney or Cloverly,  
32 which are more rural, or Potomac are at 1,450 makes no sense to me from a standpoint  
33 of the congestion levels that would seem logical given the areas of the County that  
34 we're talking about. So I will have a motion on Monday to make these changes. To  
35 make other changes.

36  
37 Councilmember Silverman,  
38 All right...and I think nothing? Okay. The second recommendation from staff was to  
39 require additional mitigation where existing and background traffic is above the later  
40 standard. This is not only do no harm but take care of the previous developer's  
41 transgressions.

42  
43 Glenn Orlin,

102



November 8, 2005

1 Like the Boy Scout keeping the campfire cleaner than...

2  
3 Councilmember Silverman,  
4 ...than when you were there.

5  
6 Glenn Orlin,  
7 Right.

8  
9 Councilmember Silverman,  
10 So the requirement from Council...

11  
12 Councilmember Praisner,  
13 Girl Scouts already do that.

14  
15 Councilmember Silverman,  
16 Right. The Council staff recommendation is to require an additional reduction of at least  
17 50 CLVs or less if less is needed to obtain the standard for each impacted intersection  
18 where existing plus background traffic exceeds the standard. We did get information  
19 from Rick Hawthorne about what the impact of the 50 CLVs would be and I think this  
20 was the -- what I characterize as the five-second solution. Beyond the street difference  
21 of 50 CLVs in affected Policy Areas would translate to about five seconds of delay to the  
22 average motorist. I guess this would be in the 1,300 to 1,450 areas, is that what you're -  
23 - what we were talking about?

24  
25 Glenn Orlin,  
26 Right. That's why I think -- that really, what Mr. Hawthorne was referring to is really  
27 more the issue on the previous page. Because the difference in 50 CLV and the range  
28 talking about here would be a much bigger difference.

29  
30 Councilmember Silverman,  
31 Right. So the policy question here basically is whether or not we want to require the  
32 next development that gets approved to not only take care of whatever they have to do  
33 but also pick up some of what hasn't been done by generations before it. That would be  
34 my characterization. I had raised the question of if we were going to require the  
35 developer to do some additional mitigation that perhaps -- beyond what they actually  
36 would have to do for their own project -- that the least we could do would be to require  
37 that we match it, so that if there a 50 CLV reduction requirement that we have to do  
38 whatever we would have to do to ensure that that was matched. Says here "staffs are  
39 exploring a related option." Have you finished exploring, or do you have your  
40 spelunker's hats on?

41  
42 Glenn Orlin,



November 8, 2005

1 Here is the problem. Mr. Silverman, in the meeting that you were suggesting that you  
2 would wanted the Council to have a say as to which projects the County would be  
3 putting up money for to make the match. I think I remember something...

4  
5 Councilmember Silverman,

6 No, no, no. What I was saying was that if we pass this requirement that says the  
7 developer "X" has to do whatever they have to do for their own project and by the way  
8 they've got to do something else to drop by 50 CLVs, that if that is what the requirement  
9 was then we would be required -- we the County would be required to match that. I  
10 wasn't suggesting that we would get involved in a development by development review.  
11 That if it was going to be something imposed on the developer then it would also be  
12 imposed on us.

13  
14 Glenn Orlin,

15 So in this example if was that -- whatever -- where I had it at, but if you reduce it by 50  
16 then the County would pitch in whatever was necessary to get it down another 50.

17  
18 Councilmember Silverman,  
19 Correct.

20  
21 Glenn Orlin,

22 Okay, as long as it was still above the standard or whatever? That is doable. I think the  
23 way it could be done is you have to appropriate money -- appropriate money in the  
24 Subdivision Roads Participation PDF and as these projects came up and they would be  
25 identified by the Planning Board and DPWT when they reviewed these projects, the  
26 money would flow out of that and into in that project.

27  
28 Councilmember Silverman,  
29 The problem with the suggestion -- I'm not sure I'm going to make it—

30  
31 Unidentified,  
32 Then why even bring it up?

33  
34 Councilmember Silverman,

35 Well, because I raised the "Fairness" question, that's why. I don't believe that the next  
36 person through should be responsible because either the previous developments didn't  
37 do , or because we chose not to spend transportation money to get these numbers --  
38 Look, if we within the to get these numbers down that's within our control every time we  
39 take up the budget. So that's -- which I believe is what the Planning Board was saying  
40 with regard to this 200 CLV issue. So the problem with my suggestion -- which was  
41 actually made half seriously -- was that if effectively would require us to target our  
42 transportation dollars to wherever a project happens to be coming through, that's getting





November 8, 2005

1 built in an area that has got high CLVs, which may or may not be where we want to  
2 spend those monies at any given point in time.

3  
4 Glenn Orlin,

5 That may be so but at least talking about intersections which you know are failing. I  
6 mean it seems to me it's actually a really good targeting of funds. It isn't necessarily  
7 what you might decide if you have a certain pot of money, do you put it to this project or  
8 that, but in the general sense it is directed toward actual problems.

9  
10 Councilmember Leventhal,

11 And if we don't spend the County dollars then the developer is off the hook?

12  
13 Councilmember Silverman,

14 That would be what I suggest. I think it's only fair for us -- remember, we're not talking  
15 about a developer -- we're talking about imposing a burden -- assuming by the way this  
16 is even legal -- imposing a burden on a developer of a project to do more than what they  
17 would be required to do. They are required to basically make up for the fact that we  
18 have a congested intersection that -- and we're requiring them to do something that has  
19 nothing to do with their project.

20  
21 Councilmember Leventhal,

22 Sure, but they knew the status of the intersection when they applied to build the  
23 development.

24  
25 Councilmember Silverman,

26 Well, but the way the Annual Growth Policy works right now if you're not in a Metro  
27 Station Policy Area you do the later -- you have the later study done. You have to meet  
28 the requirements of whatever you have to do to meet the LATR guidelines. That's what  
29 you have to do in connection with your own project. But basically what Glenn had  
30 recommended, which the Council rejected I think every time -- twice now, right?

31  
32 Glenn Orlin,

33 This is the only second.

34  
35 Councilmember Silverman,

36 Only the second time, okay. Is that what Glenn is basically saying is not only does the  
37 developer have to take care of traffic generated by their own project but they have to  
38 take on the responsibility for reducing traffic created by other projects, or by pass  
39 through traffic, and...

40  
41 Councilmember Leventhal,

42 If they apply to do a development in an area that's way over capacity all ready. I mean  
43 they know -- it's not like they don't know. They know where they are going.

105

November 8, 2005



1  
2 Glenn Orlin,  
3 Maybe this would help. The way that it's been looked at from the beginning of the  
4 Growth Policy to now is exactly what Mr. Silverman says, which is basically if a  
5 developer want to develop in an area and the intersections are over capacity it's not his  
6 fault that it's that way. And so he has been allowed to go forward and have his  
7 development approved as long as he doesn't make the problem any worse. Okay? That  
8 is been the philosophy. And it's a legitimate philosophy. The other way of looking at it is  
9 that the developer can wait until the intersections are improved by the government to  
10 what the standard is, or below the standard, and then he can go forward from there.  
11 That's what the Growth Policy is also about. In this case you're saying "Well, we're  
12 going to allow you to go forward but as long as you take care of part of the problem that  
13 exists, rather -- if you want to. It's still your choice as a developer. You can choose not  
14 to develop. You're not forced into this. And what Mr. Silverman is suggesting is sort of a  
15 halfway point between those two. Which is to say that the developer would have to  
16 make this commitment if he wants to go forward but that would be matched by the  
17 government making an equal commitment that would not necessarily make at that point  
18 in time. There's no right or wrong answer here, it's just what you feel is the right balance  
19 of needs versus...

20  
21 Councilmember Leventhal,  
22 No one in the PHED Committee offered Glenn's proposal.

23  
24 Glenn Orlin,  
25 Mr. Silverman said he was thinking about...

26  
27 Councilmember Leventhal,  
28 No, I heard what Mr. Silverman -- I got that. But there were no other members of the  
29 PHED Committee that said "Yes, Glenn, let's do that."

30  
31 Glenn Orlin,  
32 They didn't say yes or no, they didn't vote.

33  
34 Councilmember Leventhal,  
35 The way it has to work is the Councilmember has to say "Yes." That's actually how it  
36 works.

37  
38 Councilmember Silverman,  
39 The PHED Committee had no recommendation on Glenn's proposal. We did not...

40  
41 Councilmember Leventhal,  
42 So it would be fair to say that the PHED Committee did not support Glenn's proposal,  
43 nor did it officially oppose Glenn's proposal.



November 8, 2005

1  
2 Rick Hawthorne,  
3 Mr. Chairman, I think a critical question on your idea would be, a developer looked and,  
4 okay, they have got a -- the 50 CLV kicks in and there is a turn lane that gets them 150  
5 CLV improvement. Which is a standard -- often that's about the case. Would we then  
6 split the money on that project with them? That's where, I guess -- we're sort of  
7 philosophically, we're not sure how that would work.

8  
9 Councilmember Leventhal,  
10 Okay, the point of my question is though this, and it speaks to what Ms. Floreen was  
11 saying earlier today, and that is --. Look, I'm trying the get my mind around it and it's fair  
12 to the community and these very dedicated people in the audience who apparently had  
13 nothing better to do this afternoon to figure out what we're actually going to be voting  
14 on.

15  
16 Unidentified,  
17 If you're a lawyer raise your hand.

18  
19 Councilmember Leventhal,  
20 We need to know -- here is my point -- We need to know...

21  
22 Multiple speakers,  
23 [ laughter ]

24  
25 Councilmember Leventhal,  
26 Okay, I have the floor. I'm sorry, let's stay focused. I know it's 4:00.

27  
28 Unidentified,  
29 It's only 4:00.

30  
31 Councilmember Leventhal,  
32 We need to know what we're going to be voting on, that's my point. We don't have the  
33 time for a lot of abstruse proposals that no Councilmember's proposing.

34  
35 Unidentified,  
36 Abstruse?

37  
38 Councilmember Leventhal,  
39 Yeah, so let me try...

40  
41 Councilmember Silverman,  
42 Stop using those big words. Some of us are, you know, are part of the people.



November 8, 2005

1 Councilmember Leventhal,  
2 Let us understand what are the proposals that are going to be before the Council, either  
3 now or on Monday, and let us debate those things that Councilmembers may need to  
4 vote on. We appreciate the input of staff, we're grateful for our fabulous staff but if a  
5 Councilmember is not proposing something I'm not sure it's in the a good use of our  
6 time to be debating it.

7  
8 Councilmember Silverman,  
9 I think Nancy's light is on.

10  
11 Councilmember Floreen,  
12 I don't really want to debate this but I have to say that's why I don't think we should be  
13 putting -- allowing other people to determine where we're going to put County money. I  
14 think we should do it based on our priorities and where our congestion is greatest.  
15 Steve's concept is an entertaining one, I think, but not...

16  
17 Councilmember Silverman  
18 You must be entertained.

19  
20 Councilmember Floreen,  
21 Yes...the real issue I think, for County resources is put your bucks where you're going to  
22 get your biggest bang and direct them towards the biggest problems first and work  
23 down, rather than doing it based on particular development initiatives that are going out  
24 there that are not ours. Frankly, that's the whole idea of having this lengthy list of  
25 congested intersections identified in the Highway Mobility Report so we can continue to  
26 monitor them and target our resources towards a real solution that's measurable in  
27 order of prominence to the community. So let's move on.

28  
29 Councilmember Leventhal,  
30 Yeah, let's go ahead.

31 Move on, okay?

32 But just to clarify no one is proposing what Glenn proposed and what Mr. Silverman  
33 proposed was an alternative to what Glenn proposed, so this matter is not going to  
34 come before us?

35  
36 Councilmember Praisner,  
37 Right.

38  
39 Councilmember Leventhal,  
40 Not going to come before us. Okay, Highway Mobility Report.

41  
42 Councilmember Silverman,



November 8, 2005

1 All right, the PHED Committee and Council staff recommended that we conquer with the  
2 Planning Board to produce this report bi-annually with the Growth Policy.

3  
4 Councilmember Leventhal,  
5 Okay, Ms. Praisner.

6  
7 Councilmember Praisner,  
8 I've changed my mind. After sitting through our review of the state highway CTP  
9 annually and having the discussions to try to get across the street to do facility planning  
10 for things that need to be done and get them into the CIP, I think we need this report  
11 annually. So, I've changed my mind.

12  
13 Councilmember Leventhal,  
14 Okay, so we'll have a vote on that at the appropriate time.

15  
16 Councilmember Silverman,  
17 If I may, what is the downside to getting this annually? What is involved in getting this  
18 annually?

19  
20 Jeff Zyonz,  
21 We're trying to keep the database up-to-date as we go. What takes up the time is to  
22 produce the document -- what do you think, a couple of months?

23  
24 Rick Hawthorne,  
25 The problem is we didn't think it was going to show very much change one year to one  
26 year because we don't get that many new counts. So next year's would like a lot like this  
27 year. Whereas a two-year gives you a larger gap where you're more likely to see  
28 changes.

29  
30 Councilmember Leventhal,  
31 Okay, all right, we'll have that vote at the appropriate time.

32  
33 Councilmember Silverman,  
34 You've got lights.

35  
36 Councilmember Leventhal,  
37 Ms. Floreen.

38  
39 Councilmember Floreen,  
40 I think we want an updated list and we want to pay attention to it when we look at  
41 transportation priorities to the State . We want to look at attention to it if there is a CIP  
42 initiative that we can get onto. The challenge of the CIP is that it is also an every other  
43 year event and that's the only reason that it's written a certain -- whether or not we have

109



November 8, 2005

1 a big formal thing I think it's incumbent upon staff to give an annual report that's as up-  
2 to-date as it is but we don't need a lot of extra stuff. Maybe that's the issue for you, with  
3 your analytical -- you did a great job of paring it down this time around. And maybe a  
4 way to address this is simply make sure we have an up-to-date list every summer that's  
5 based on the newest reports that you have. It's a running list so there are not a lot of  
6 huge issues, except the big advantage actually is what you added this year which were  
7 comments on the stage of how we're addressing them. And I think the whole point of  
8 this Mobility Report, frankly, was to remind us and keep on us about what we have to do  
9 and what we have to fund and where problems are. And when we're actually -- you  
10 have imposed conditions that will address those problems. You'll let us know through  
11 this mechanism and that's a helpful report card for us and the public to know what we're  
12 holding ourselves to, that was the whole point of this report. So I guess that I agree with  
13 Ms. Praisner, let's just -- we don't need to make it into a big long lengthy document. Just  
14 the pages that have the intersections and the notes.

15  
16 Councilmember Leventhal,  
17 Okay, Adequate Public Facilities adequacy finding, page 16.

18  
19 Councilmember Silverman,  
20 All right, PHED Committee recommended unanimously transferring final APF review of  
21 previously recorded lots from the Department of Permitting Services to the Planning  
22 Board.

23  
24 Councilmember Leventhal,  
25 Okay, no discussion.

26  
27 Councilmember Silverman,  
28 Okay, Public Safety Adequacy Test...the Committee unanimously recommended not  
29 establishing a new APF test for public safety services.

30  
31 Councilmember Leventhal,  
32 No lights.

33  
34 Councilmember Silverman,  
35 Okay, Staging ceilings in Bethesda CBD and North Bethesda/Garrett Park. We had  
36 extensive discussion about this on both of these things. It was a 2-1 vote with Ms.  
37 Floreen and myself not recommending establishing staging ceilings in the North  
38 Bethesda/Garrett Park Policy Areas or Bethesda Policy Areas, except to support a job  
39 ceiling of 4,765 in the Bethesda CBD. Ms. Praisner recommended there should be  
40 ceilings developed for housing and jobs in every policy area including the Bethesda  
41 CBD and the North Bethesda/Garrett Park Policy Areas.

42  
43 Councilmember Leventhal,



November 8, 2005

1 Ms. Praisner.

2  
3 Councilmember Praisner,

4 Well, I just happen to believe that we need staging ceilings and where we have them in  
5 documents. This a question of master plan versus APF and the more that I've thought  
6 about it the -- the more I've thought that and I thought by the this morning as we talked  
7 about being clear and transparent et cetera. And I really think part of the confusion with  
8 heights and different things is to some extent an issue of some of it's in the Zoning  
9 Code, some of it in site plans, some of it is in Planning Board opinions, and some of it  
10 necessary master plans. And to the extent that we have staging in master plans I just  
11 think somehow we should carry those staging ceilings into the Growth Policy -- I started  
12 to say Annual Growth Policy -- and I don't suggest that we would change them but I  
13 think that we should kind of codify or reaffirm where we have staging ceilings in master  
14 plans within the policy. The Growth Policy and we should track them and report on them  
15 in that way. And to the extent that we have especially Central Business Districts where  
16 some of the things are more critical or some areas where they're more critical, we  
17 should be looking at staging ceilings for both housing and jobs in those policy areas. I  
18 don't know that every policy area requires that kind of staging but certainly we're going  
19 to have those issues with Shady Grove. We have those issues with Clarksburg. We  
20 have them with Woodmont as a subset of Bethesda's Central Business District. I  
21 suspect if we look again at Wheaton we'll have that issue and to some extent we should  
22 look it's both in the Growth Policy and in the master plan. Kind of have them both in the  
23 same place.

24  
25 Councilmember Leventhal,

26 Very good. That would take us to...

27  
28 Councilmember Silverman,

29 We are down to "C." And I can't remember. Glenn, did we -- dispose of this piece?

30  
31 Glenn Orlin,

32 No, this is language that Ms. Michaelson developed.

33  
34 Councilmember Silverman,

35 Right, I know. Did we...

36  
37 Glenn Orlin,

38 You didn't talk about whether or not you wanted to include...

39  
40 Councilmember Silverman,

41 I can't remember if we kicked it back to ourselves to take up in the Woodmont Triangle  
42 Plan.



November 8, 2005

1 Glenn Orlin,

2 The reason why it's in the -- would be in the Growth Policy, if you chose, is because  
3 you're looking for a report every year, or every other year actually -- I'm sorry every  
4 other year -- on this kind of -- for this information. The question is whether or not you  
5 want to include it in the Growth Policy report or not, or something different.

6  
7 Councilmember Silverman,

8 All right. Well this would correct me if I'm wrong this would be just as it relates to the  
9 Woodmont Triangle area, not other place in the County.

10  
11 Glenn Orlin,

12 Well, the Bethesda CBD.

13  
14 Councilmember Silverman,

15 Okay. Other than that no other area there would be no tracking of approved  
16 development plans.

17  
18 Glenn Orlin,

19 Well, I'm sorry, one of the things that she suggests and I'm sorry she is not here for this,  
20 I didn't think to call her in. Marlene if you're here. She says the analysis could be limited  
21 to the Bethesda CBD, or done for all CBDs, or in all planning areas that rely  
22 predominantly on mixed use zones. So it's, again...

23  
24 Councilmember Silverman,

25 What is -- I would like to ask the Planning Board their thoughts in particular in terms of  
26 workload...

27  
28 Unidentified,  
29 Right.

30  
31 Councilmember Silverman,  
32 Feasibility and workload.

33  
34 Karl Moritz,

35 Well, in terms actually tracking the amount of development that's approved every year  
36 we're tracking that already. So I don't think there would not be a significant addition on  
37 the workload in terms of tracking the development in Bethesda CBD.

38  
39 Councilmember Silverman,

40 Well, no, how about beyond -- in other words what I want to understand is why would  
41 we just single out the Bethesda CBD for this information. In other words, this came up in  
42 the context of the Woodmont Triangle Master Plan. We have other CBDs and we've got





November 8, 2005

1 other mixed use zones, so what would be the policy reason just to do this in connection  
2 with the Bethesda CBD as opposed to Countywide?

3  
4 Karl Moritz,  
5 I should clarify that, we're tracking it Countywide, so that we could have the chart --  
6 we're making this table anyway.

7  
8 Councilmember Silverman,  
9 You are.

10  
11 Karl Moritz,  
12 We can report out how much development is occurring anywhere you wanted to hear.

13  
14 Councilmember Silverman,  
15 Okay.

16  
17 Unidentified,  
18 Okay then.

19  
20 Councilmember Leventhal,  
21 So again this would require a Councilmember proposing it.

22  
23 Councilmember Praisner,  
24 I will.

25  
26 Councilmember Leventhal,  
27 And Ms. Praisner wants to.

28  
29 Councilmember Silverman,  
30 And unless somebody has got a problem with it let's just go do it.

31  
32 Councilmember Leventhal,  
33 Okay, Ms. Praisner followed by Ms. Floreen.

34  
35 Councilmember Praisner,  
36 This speaks to the issue that we just talked about in the broad sense and relates it to  
37 Woodmont and Bethesda Central Business District. I'm not going to say what I said  
38 earlier in the broader one but I think we should be doing this. So I would propose this.

39  
40 Councilmember Leventhal,  
41 Ms. Floreen.

42  
43 Councilmember Floreen,



November 8, 2005

1 I think this is fine. We did talk about this in Committee and the element that I want to  
2 have included as well. Is, Karl alluded to it, it's not just approvals, it's actually what is  
3 occurring. So the additional line would be what is actually occurring. Which is what --  
4 where there are housing completions where there are actual jobs to the extent that we  
5 can identify them being actual jobs. Keep in mind that this is an academic exercise until  
6 people move into units or office space or activity areas. We talked about this a tad the  
7 other day. I know that we don't have good data particularly on the job's side, because  
8 you assume...

9  
10 Councilmember Silverman,  
11 Oh, Marlene.

12  
13 Councilmember Floreen,  
14 Oh, here is Marlene. You've assumptions about square footage associated with  
15 positions. There is information out there that I guess the State generates.

16  
17 Councilmember Silverman,  
18 I don't mean to interrupt and we did have this discussion in Committee, and the answer  
19 is they can't produce that kind of information.

20  
21 Councilmember Floreen,  
22 I'm not sure if the answer is they didn't know.

23  
24 Councilmember Silverman,  
25 No, the answer is they know and they can't, because there is no -- there is aggregate  
26 job data for areas, but the issue of how many jobs were actually created in 1010 Wayne  
27 Avenue you would only get from knocking on the door of every business that is at 1010  
28 Wayne.

29  
30 Derick Berlage,  
31 We can tell what you is approved, and we can tell you what's been built.

32  
33 Councilmember Silverman,  
34 Right, but not in terms how actual jobs.

35  
36 Derick Berlage,  
37 Right, but we can't tell you the number of jobs.

38  
39 Councilmember Silverman,  
40 Right, square footage.

41  
42 Councilmember Floreen,



November 8, 2005

1 Perhaps, and then my request would be to work with the resources out there. Maybe a  
2 total for the -- I know there is a total for the County because the Council of Governments  
3 report it. See if that's reflective. Obviously all you're going to have is maybe you're just  
4 going to have existing totals. I think it's important to have a reality check.

5  
6 Councilmember Praisner,  
7 Nancy what COG reports is what we give them and what we give them is square  
8 footage not actual jobs.

9  
10 Councilmember Floreen,  
11 No, they do it in different ways.

12  
13 Councilmember Silverman,  
14 Well, there are macro job numbers that are created, but they are not created within a  
15 particular area. In other words we know how many jobs were created in the last year in  
16 Montgomery County because that information is available through the State. What we  
17 don't have is how many job were created in the Silver Spring Central Business District.

18  
19 Councilmember Floreen,  
20 I agree with that.

21  
22 Councilmember Silverman,  
23 That's what we're talking about. If we're looking for a report what we're looking for actual  
24 development -- I mean I'm looking at what is on page 21. We're looking for what you've  
25 approved, what has actually been developed, and what that will mean is you will have  
26 actual housing development that's, quote "built" because that's "trackable" through the  
27 Department of Permitting Services and what you'll have is what has been built like  
28 100,000-square-foot office building. Well know if that was built or not. We just want --  
29 won't have it on a job basis, but we'll be able to compare it on a square footage basis.

30  
31 Councilmember Floreen,  
32 Can you give us the information based on the net increase because often times  
33 especially in the Central Business Districts looking at replacement numbers.

34  
35 Rick Hawthorne,  
36 Yes, yes we could.

37  
38 Councilmember Floreen,  
39 Thank you.

40  
41 Councilmember Silverman,  
42 Well, I don't think there's anything controversial about this. All right, we need to go back  
43 to -- let's go back to roman numeral two, page 4, White Flint and Grosvenor Metro

November 8, 2005



1 Station Policy Area boundaries. We'll start with the White Flint MSPA. The PHED  
2 Committee unanimously recommended that the Council should expand the boundary to  
3 that shown on Circle 81A and the rationale is because with the exception of White Flint  
4 all the other Metro Station Policy Areas have an area that extends about half a mile  
5 away from its Metro Station. So this was to be consistent. And as part of this discussion  
6 about White Flint the Committee also unanimously recommended that we clean up a  
7 technical error in the resolution before which -- so that the North Bethesda  
8 Transportation Management District non-driver mode share goal of 39% applies to  
9 workers not residents. And that the Bethesda CBD non-driver mode share goal of 37%  
10 only applies to workers.

11  
12 Councilmember Leventhal,  
13 No lights.

14  
15 Councilmember Silverman,  
16 Okay. Grosvenor Metro Station Policy Area. Again, Council -- the PHED Committee  
17 recommends unanimously concurring with the Planning Board to retain the current  
18 Grosvenor MSPA boundary, so that it was consistent with all of the other Metro Station  
19 Policy Areas.

20  
21 Councilmember Leventhal,  
22 Ms. Praisner

23  
24 Councilmember Praisner,  
25 Not on that issue, I think we're done though.

26  
27 Councilmember Silverman,  
28 On those -- on those...

29  
30 Councilmember Praisner,  
31 Well, we skipped over number one.

32  
33 Councilmember Silverman,  
34 I was get back to that, I haven't -- no, I was just dealing with the other stuff.

35  
36 Councilmember Praisner,  
37 Okay, then I'll wait.

38  
39 Councilmember Silverman,  
40 Right. Okay. Okay? Okay. Now we're back to number one. Which is the PPAR or the  
41 PATR. The Preliminary Plan Approval Rate, which was proposed by the Planning  
42 Board, and then we've got the possible Policy Area Transportation Review which we  
43 eliminated two years ago and the recommendation of the Committee on a 2-1 vote is to

116

November 8, 2005



1 not -- not only not recommend -- Well, I don't want to speak for Ms. Praisner on this  
2 because I know you're going to speak for yourself. We did not recommend -- Ms.  
3 Floreen and I did not recommend reintroducing Policy Area Review. We obviously did  
4 not support the PPAR approach, and I'll just let Ms. Praisner speak.  
5

6 Councilmember Praisner,

7 Thank you. I agree with my colleagues not to reintroduce the Policy Area Review as  
8 was in existence until two years ago. On the other hand as was suggested the Planning  
9 Board had looked at two options. They came forward with one. Which would have had a  
10 percentage of growth and had some problems at the Council table. Unfortunately we  
11 never went back to the Planning Board and asked them what their other alternative was  
12 if you didn't -- or if there were in other alternatives explored. Although I think they made  
13 some reference to the fact that they had been looking at other options. I asked during  
14 the public hearing process for this Growth Policy for information on what was the other  
15 option and staff came forward. I do not believe that it is at a point even if I was  
16 supportive -- totally supportive of it and you all were supportive of it that you had  
17 massaged it to the point where it's a standing proposal. But it does -- it is simpler that  
18 what was in place before, but it still has some policy area consideration. The areas that  
19 you presented to us in my view are too broad. It masks too few and masks an awful lot  
20 of issues associated with it. What I'm going to propose on Monday is that we ask them  
21 for their work plan to submit us to by some time next year the more -- work on that  
22 methodology including staging ceilings based on that simple staging process for I guess  
23 10 or more sub areas and pulling out separately the Metro Station Policy Areas. so that  
24 at least we have the benefit of looking at that and seeing whether we want for the work  
25 done in time for the next bi-annual GP process. I'm having trouble dropping the "A." So  
26 I'll get that around to my colleagues so they can see that. Again, it's not endorsing  
27 anything but just asking that further work be done. The issue that I'm most concerned  
28 about is the issue of staging and I think that this could respond to that issue.  
29

30 Councilmember Silverman,

31 Could I get a clarification, Ms. Praisner?  
32

33 Councilmember Praisner,

34 Sure.  
35

36 Councilmember Silverman,

37 Are you asking them to come back in some period of time with the further refinement of  
38 this with the intent that the Council would take this up next year, or with the intent that  
39 the Council would take it up during its bi-annual review of the Growth Policy?  
40

41 Councilmember Praisner,

42 I'm a happy to sit down with the Planning Board staff and see how much work would be  
43 involved, et cetera. But I suspect -- I'm not suggesting that we would change the Growth

117



November 8, 2005

1 Policy next year. But we do have annual information provided us to and I suspect that if  
2 there is interest in this concept since no one has had a chance to comment on it, it will  
3 require further work and will not be ready for prime time. What I would like is some  
4 dialogue about this before the next Growth Policy two years from now so that it is more  
5 refined and more ready for consideration. So that's why I asked for something that we  
6 could talk about between now and their work on the next bi-annual Growth Policy.

7  
8 Derick Berlage,  
9 I just want to be clear. So, this is something that you'll propose to the Council on  
10 Monday, or asking us right now to give you some...

11  
12 Councilmember Praisner,  
13 No, Council on Monday.

14  
15 Councilmember Silverman,  
16 When we have this piece of discussion can you give us some sense because it's really -  
17 - I'm not saying I have a problem with it. I just want to under it from -- this is in addition  
18 to your work program. So give us some sense about what is involved because as we  
19 discussed before about your program of work...

20  
21 Derick Berlage,  
22 It gets bigger and never gets smaller.

23  
24 Councilmember Silverman,  
25 Right. Okay. When I say I think that's it, that's the Committee recommendations. I know  
26 we've additional information that has been provided us to. And I don't know whether  
27 anyone else wants to bring anything up but that's the Committee's recommendation at  
28 this point.

29  
30 Councilmember Leventhal,  
31 Okay, Mr. Andrews.

32  
33 Councilmember Andrews,  
34 I want to thank Parking and Planning for providing the information in the addendum,  
35 Appendix "A" that showed a number of communities that have seen an increase in real  
36 pre capita income and actually have had a decline in population or a modest increase.  
37 So, it is something that looks -- Scranton-Wilkes-Barre was actually listed at the top  
38 where they had a decline, almost a half a percent in population and in real per capita  
39 income an increase of 1.35%. The point is they are not directly related. Growth and  
40 income is not directly related to growth and population or growth and jobs.

41  
42 Councilmember Leventhal,



November 8, 2005

1 Okay, if there are no other comments from Councilmembers, have you got anything  
2 else to say, Mr. Silverman?  
3  
4 Councilmember Silverman,  
5 No, I don't, Mr. Leventhal.  
6  
7 Councilmember Leventhal,  
8 Okay, All right, so then the Council stands in recess. We will reconvene at 7:00 p.m.  
9 promptly. We have a lot of witnesses. We have a long night on the third floor. I implore  
10 my colleagues to be prompt: 7:00 p.m.  
11  
12  
13